



IN THE HIGH COURT AT MIGORI

SUCCESSION CAUSE NO. 299 OF 2014

(FORMERLY KEHANCHA SRM SUCCESSION CAUSE NO. 49 OF 2012)

IN THE MATTER OF THE ESTATE OF

NYASENDI WAMBURA (DECEASED)

BETWEEN

ALFAYO RAGITA NYASENDI APPLICANT

AND

JOHN MARWA NYASENDI RESPONDENT

R U L I N G

1. This matter relates to the Estate of Nyasendi Wambura (deceased) who died on 10th May 1987. The application for the grant of representation of his estate was filed by John Marwa Nyasendi, his son, who stated that he had two other siblings namely; James Magige Nyasendi and Agnes Boke Nyasendi. A grant was thereafter issued in Kehancha SRM's Court Succession Cause No. 49 of 2012 on 28th January 2013 and confirmed on 9th September 2013.
2. By summons for revocation dated 18th July 2014, Alfayo Ragita Nyasendi, moved the Court to revoke the grant on grounds of material non-disclosure. He states that the petitioner did not disclose all the beneficiaries of the estate and the property subject of the estate was valued over Kshs. 100,000/= hence the court issuing the grant of representation lacked jurisdiction.
3. I have heard both sides and it is not in dispute that the deceased was married with two wives, ROBI NYASENDI and GATI NYASENDI. They all have children who are direct beneficiaries of the estate of the deceased. **Section 51** of the *Law of Succession Act (Chapter 160 of the Laws of Kenya)* is clear that all the beneficiaries of the deceased must be named in the petition. Failure to name all of them constitutes material non-disclosure which entitles the court to set aside the grant of representation under the powers vested in it under **section 76** of the *Act*.
4. The dispute between the parties, as I see it, is whether the deceased prior to his death had distributed part of his estate. This will be an issue to be dealt with at the confirmation stage.
5. In the circumstances, I make the following orders;
 - a. The grant of representation issued to John Marwa Nyasendi in *Kehancha SRM's Court Succession Cause No. 49 of 2012* on 28th January 2013 and confirmed on 9th September 2013 be and is hereby revoked. The respondent shall return the original certificates of grant to court for

- cancellation.
- b. A fresh grant of representation for the estate of the deceased be and is hereby issued to **JOHN MARWA NYASENDI** and **ALFAYO RAGITA NYASENDI**.
 - c. The Administrators, or either of them shall apply for confirmation of the grant within 30 days
 - d. There shall be no order as to costs.

DATED and **DELIVERED** at **MIGORI** on this 8th day of September 2014

D.S. MAJANJA

JUDGE

Mr Mudeyi instructed by Mudeyi Okumu and Company Advocates for the applicant.

Mr Kisera instructed by Omonde Kisera and Company Advocates for the respondent.