



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 9 OF 2001

IN THE MATTER OF THE ESTATE OF LUKAS KILOO KASAU (DECEASED)

ESTHER M. KILOO.....1ST PETITIONER

PETER N. KILOO.....2ND PETITIONER

VERSUS

BETH NDINDA MUASA.....1ST PROTESTOR/OBJECTOR

ELIZABETH MWENDE MUASA 2ND PROTESTOR/OBJECTOR

WENDWA DAVID KILOO.....3RD PROTESTOR/OBJECTOR

AND

RUTH MUTANU KILOO.....1ST INTERESTED PARTY

DAVID MUASA KILOO.....2ND INTERESTED PARTY

RULING

1. The application dated **22nd November 2013** brought pursuant to the provisions of **Section 76(e)** of the **Law of Succession Act**, and **Rule 44(1)** and **73** of the **Probate and Administration Rules**, the applicants: **Beth Ndinda Muasa** and **Wendwa David Kiloo** seek revocation of grant of letters of administration intestate of the estate of **Lucas Kiloo Kasau** made to **Esther M. Kiloo** and **Peter N. Kiloo** and subsequence issuance of the same to the applicants jointly with **Peter N. Kiloo** the **2nd** Respondent.
2. The application is supported by an affidavit deponed by the **2nd** applicant who depones that letters of administration intestate of the deceased's estate was made to **Esther M. Kiloo (Esther Mukethe Kiloo)** and **Peter N. Kiloo**; the said **Esther Mukethe Kiloo** who was the deceased's widow died on the **18th November 2008** and the applicants herein are administrators of her estate; the grant issued has become useless and inoperative following the death of **Esther Mukethe Kiloo**; the **2nd** Respondent /Petitioner herein has not taken any step to apply for a fresh grant and confirmation thereof and the **2nd** Petitioner has failed in his duties as an administrator.
3. In a reply thereto the **2nd** Petitioner/Respondent deponed that: the applicants had not satisfied the conditions of revoking a grant; the applicants failed to disclose that there was an application pending seeking to revoke letters of administration issued to the applicants; they failed to disclose

that the deceased has a son known as **David M. Kiloo** and daughters **Ruth Mutanu Kiloo** and **8 others** surviving her; the objectors are estranged wives of **David M. Kiloo** and grandson to the deceased respectively who cannot purport to administer the estate of the deceased when the Respondent's step brother and sisters are living and that he is capable of administering the estate without the assistance of the objectors who are intruders.

4. **Section 76(e)** of the Law of **Succession Act** stipulates:

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion.

(e) that the grant has become useless and inoperative through subsequent circumstances.”

5. **Esther Kiloo** died on the **18th November 2008**. Her co-administrator, the Respondent herein **Peter Kiloo** has taken more than **six (6) years** without taking any step as an administrator of the estate of the deceased. He has failed to seek issuance of fresh letters of administration intestate and/or have the deceased substituted as an administrator of the estate. This was failure on his part as an administrator.
6. In their application the applicants failed to disclose the relationship between them and the deceased.
7. In the replying affidavit it is stated that the applicants failed to disclose that **Esther Kiloo** was survived by a son **David Kiloo** and **eight daughters, Ruth Mutanu Kiloo** being one of them. Further, that, the applicants are estranged wives of **David Kiloo** and a grandson to the deceased. Attached to the replying affidavit is an annexure **“PNKI”** and application for revocation of grant filed in **Succession Cause No. 306 of 2011** in respect of the estate of **Esther Kiloo** where the applicants herein are administrators of the estate.
8. The application was filed by **David Muasa Kiloo** and **Ruth Mutanu Kiloo** seeking to have the grant revoked. They filed the application in their capacity as direct beneficiaries of the deceased.
9. These averments have not been challenged by the applicants herein.
10. **Section 38** of the **Law of Succession Act** provides:

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of Sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.”

Persons who would be given priority when it comes to administration of the deceased's estate would be his children. In the premises **David Kiloo** and **Ruth Mutanu** would be better placed to administer the estate of the deceased.

11. Having considered the affidavit evidence adduced and rival submission of both counsels, it is evident that the grant issued herein has become ineffective. Consequently, I hereby revoke it. A fresh grant shall issue in the names of persons to be identified by the family within **30 days**. In default, the same shall issue in the name of **Peter Kiloo** as a sole administrator.
12. This being a Succession matter, each party shall bear their costs.

DATED, SIGNED and DELIVERED at MACHAKOS this 5TH day of DECEMBER, 2014.

L.N. MUTENDE

JUDGE