



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**SUCCESSION CAUSE NO.407 OF 2003**

IN THE MATTER OF THE ESTATE OF **STEPHEN KIOKO MAILU (DECEASED)**

**PRISCILLA KAVIVI KIOKO.....1<sup>ST</sup> APPLICANT/1<sup>ST</sup> OBJECTOR**

**IBRAHIM NDENGE KIOKO.....1<sup>ST</sup> APPLICANT/ 2<sup>ND</sup> OBJECTOR**

**VERSUS**

**ESTHER MWETHYA KIOKO.....1<sup>ST</sup> RESPONDENT**

**MUTUA WAMBUA.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. A grant of Letters of Administration Intestate (grant) in respect of the Estate of **Stephen Kioko Mailu** (deceased) was issued to **Esther Mwethya Kioko** and **Mutua Wambua** on the 6<sup>th</sup> April, 2005. The grant was confirmed on the 11<sup>th</sup> November, 2005. Accordingly, the capital assets were distributed. Parcel of land No. Nzau/Kalamba/18 the only asset left by the deceased was to be registered in the name of the administratrix **Esther Mwethya Kioko**.
2. In an application dated 4<sup>th</sup> August, 2008, the applicants who describe themselves as a widow and son to the deceased, respectively, seek revocation/annulment of the grant on the following grounds:-
  - a. That the grant was obtained fraudulently without the consent of the applicants and other beneficiaries of the estate of the deceased.
  - b. The proceedings to obtain the grant were defective.
  - c. The respondents were using the grant to threaten the applicants of an impending eviction.
3. The application is supported by an affidavit deponed by **Pricilla Kavivi Kioko**, the 1<sup>st</sup> applicant who depones that when the Respondents obtained Letters of Administration they did not notify other beneficiaries of the estate of the deceased. They did not even seek their consent. They only came to learn of the matter when the respondents sued them in Civil Case No. 74 of 2007 seeking orders restraining them from trespassing on the land transferred to the 1<sup>st</sup> respondent following the grant obtained.
4. She stated that she is a widow to the deceased while her co-applicant is their son. Both of them are entitled to the estate of the deceased. Failure to include them in the list of beneficiaries was malicious; intended to disinherit them of their share. The action taken by the respondent was

- hence fraudulent.
5. The application was duly served on all beneficiaries following the directive given by the court. The court further directed that the application be canvassed by way of written submissions. The respondents failed to either respond to the application or file written submissions.
  6. In his submissions **Mr. Geoffrey Kilonzo** for the applicants submitted that the deceased had two (2) wives, the 1<sup>st</sup> applicant and the 1<sup>st</sup> respondent herein. Having died intestate his estate should have been distributed in accordance with Kamba customary law. It should have been distributed in equal shares. Failure to involve the applicants in obtaining of Letters of Administration and distribution of the estate was fraudulent. Disallowing the application would result into disinheriting the applicants.
  7. Prior to obtaining letters of administration intestate, the applicant annexed to the Petition a letter from the Chief of Kalamba Location, **Mr. Muoki**. In his letter he stated that the legal wife of the deceased was **Mrs Esther Mwethya Kioko**. No marriage certificate was annexed to establish what kind of union the two (2) entered into. In seeking revocation of the grant the applicant has stated that she was a widow to the deceased and they had a son, the co- applicant. These respondents were represented by an advocate yet did not file any response to the application. This would imply that what the applicant stated was true.
  8. A grant may be revoked or annulled if it is established that it was obtained fraudulently by making a false statement or by concealing from the court something material. (*see section 76 of the Law of Succession Act*).
  9. At the point of petitioning the court for Letters of Administration, the 1<sup>st</sup> and 2<sup>nd</sup> respondents were required to include all people who survived the deceased. This does not seem to have been the case. In the circumstances the existence of some beneficiaries was concealed from the court.
  10. Having considered the application and submissions filed by counsel, I am satisfied that the grant was obtained through concealment of some material facts. Justice would require such a grant to be revoked to enable the court reconsider the case on merit.
  11. In the premises, I do revoke/annul the grant issued to the respondents herein.
  12. In the interest of justice, I do direct that the respondent do apply for Confirmation of the Grant with notice to the applicants herein.
  13. Costs of this application shall be in the cause.

**DATED, SIGNED and DELIVERED at MACHAKOS this 2<sup>nd</sup> day of JULY 2013.**

**L.N. MUTENDE**

**JUDGE**