

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

HIGH COURT AT NAIROBI(MILIMANI COMMERCIAL LAW COURTS)

SUCCESSION CAUSE NO.1997 OF 2009

IN THE MATTER OF THE ESTATE OF SARAH ANANA NANGURA alias SARAH ANANA Ene NANGURAI (DECEASED)

RULING

The Deceased, Sarah Anana Nangurai, died on 1st February 2005 aged 72 years. She was a Kenyan and was domiciled in Kenya. Her husband, **Yusuf Makwaya Mutagunwa (the Respondent)** petitioned for and obtained on 1.2.2010 a Grant of Letters of Administration intestate. In his Petition for the Grant, the Respondent indicated as the children of the deceased only 4 children, that is to say, two sons and two daughters, namely **Din Vedatso Mutagunwa** and **Lenatos Yusuf Mutagunwa** and **Leila Nyamwiza** and **Khadija Yusuf Mutagunwa**. He omitted to show in the Petition the names of **Hussen Nangurai Polen** and his brother **Ali Shamuti Mohamed (the Applicants)**.

The Estate of the deceased in Kenya was made up of the land referred to as **L.R.167/Residential/Bulibu T.C.**

On 28.7.2010, the Applicants applied by summons dated 27.7.2010 for revocation of the grant on the grounds, inter alia, that they (Applicants) had not consented to the Petition by their father and were not aware of it. They contended that their step father who is a Tanzanian national had failed to include in the Estate unnamed properties that the deceased owned in Tanzania.

The Respondent swore and filed a replying affidavit on 16.5.2011 in which he asserted that he is entitled to administer the Estate of the deceased.

When the Application came up for hearing on 30.11.2011, Mr. O. N. Ojwang, the learned counsel for the Applicants, urged the court to revoke the grant made to the Respondent and emphasized that the names of the Respondents as beneficiaries were omitted in the Petition and that their consent was neither sought nor obtained.

Mr. G. Matwere, the learned counsel for the Respondent, relying on the latter's replying affidavit contended that the Respondent was the husband of the deceased and that he had not disowned the Applicants and that he was intent on having the Estate of the deceased distributed among the children named in the Petition together with the two Applicants. The Respondent, said Mr. Matwere, did not seek to be allocated any share in the land left by the deceased.

I have perused the Application and the Replying Affidavit. It was incumbent upon the Respondent to disclose the names of the Applicants in the Petition as the children of the deceased. This he failed to do. Nor did the Respondent comply with Rule 26 of the Probate and Administration Rules that required him to give notice of the Petition to the Applicants. The Respondent has conceded, albeit obliquely, that the deceased left other property in Tanzania and that he obtained a Grant to administer the Estate there. He has not made full disclosure in that regard.

I have duly perused the Application and the Replying Affidavit and have also duly considered the submissions made by the two learned counsel. It is my finding that the Petition for the grant was defective in substance and was obtained fraudulently by concealment from the court of the existence of the Applicants whose consents were necessary. This Respondent knew, or ought to have known. Pursuant to Section 76 of the Law of Succession Act, Cap 160, I hereby revoke the grant made to the

Respondent. The Respondent shall pay the costs.

Dated at Milimani Law Courts, Nairobi, this 1st day Of March 2012.

G.B.M. KARIUKI, SC

JUDGE

COUNSEL APPEARING

Mr. O. N. Ojwang Advocates for Applicants

Mr. G. R. Matwere of Rumba Kinuthia & Co. Advocates for the Respondent

Mr. Kugwa – Court Clerk