



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIVASHA**

**SUCCESSION CAUSE NO. 7 OF 2015**

**IN THE MATTER OF THE ESTATE OF CHOMBA RUTERE (DECEASED)**

*(Original Succession Cause No. 66 of 2013 of the Senior Resident Magistrate's Court at Engineer)*

**BONFAS MURIGI RUTERE.....APPLICANT**

**-VERSUS-**

**JULIUS KAMANDE CHOMBA.....RESPONDENT**

**R U L I N G**

1. The gravamen of the Chamber Summons for revocation of grant filed on 12<sup>th</sup> January 2015 and respective affidavits of the Applicant is that the Applicant though conceding to the Petition was not called upon to give consent to the summons for the confirmation of the grant in Engineer Succession Cause Number 66 of 2013.

2. Secondly, he asserts that the distribution of the estate was adverse to the interest of some of the beneficiaries including himself, **Peter Mwangi Chomba** (late son of the deceased) and **Cecilia Njoki Mwangi** (daughter in law of the deceased).

3. In his sworn replies, the sole administrator of the estate **Julius Kamande Chomba** contends that the estate was distributed in accordance with the last wishes of the deceased. He concedes that **Cecilia Njoki Mwangi** is the wife of his late brother **Patrick Mungai Chomba**, therefore entitled and that, another brother **Eliud Thuo Chomba** died young.

4. From depositions and annexures filed, it is beyond disputing that the potentially entitled beneficiaries of the deceased were:

- |                           |   |                 |
|---------------------------|---|-----------------|
| 1. Bonfas Murigi Rutere   | - | Son (Applicant) |
| 2. Julius Kamande Chomba  | - | Son             |
| 3. Tabitha Muthoni Chomba | - | Daughter        |
| 4. George Njuguna Chomba  | - | Son             |

5. The wife or children of the late Peter Mwangi Chomba - Son
6. Njuguna Ngarachu - Purchaser
7. Cecilia Njoki Mwangi (wife of deceased Patrick Mungai Chomba, a son of the deceased) - Daughter-in-law
8. Cecilia Njeri Mbugua - Daughter

5. It is also not in dispute that the deceased did not leave a will as contemplated by Section 9 and 10 of the Law of Succession Act. He therefore died intestate, yet, the distribution of the estate, according to the Respondent, was based on the alleged will of the deceased. The Petition was allegedly filed consequent to agreement between all the beneficiaries, save the family of the late **Peter Mwangi Chomba**. The assets of the estate are:

1. **NAIVASHA/MARAIGUSHU BLOCK 1/448**
2. **NAIVASHA/MARAIGUSHU BLOCK 1/1303**
3. **NAIVASHA/MARAIGUSHU BLOCK 1/1307**

6. There are no certified copies of title documents to confirm ownership or acreage of these properties. Further, while it is true that the Applicant withdrew a previous objection and cross-petition before the lower court, he did not grant consent to the confirmation of the grant; and the withdrawn objection related to the Petition but not the Summons for Confirmation.

7. In the view of all the foregoing, I am of the view that the confirmed grant dated 29<sup>th</sup> October, 2014 ought to be revoked which I hereby order. A rectified grant will be issued immediately in the names of the following beneficiaries:-

1. Bonfas Murigi Rutere - Son
2. Julius Kamande Chomba - Son
3. Tabitha Muthoni Chomba - Daughter

8. At the expiry of 6 months, the three administrators will be at liberty to jointly file summons for the confirmation of the grant, supported by 8 affidavits sworn by each of the identified beneficiaries, proposing the manner in which the estate property is to be distributed.

9. In the event that after 9 months of the issue of the grant in paragraph 7 above, the parties do not comply as above, the court will call up the file and give directions as it may deem fit in the matter. In the latter event, this file will be listed for mention in 2016. It is so ordered. Each party to bear its own costs.

Delivered and signed at Naivasha this 5<sup>th</sup> day of **November, 2015**.

In the presence of:-

The Applicant : In person

For the Petitioner : Mr. Gichuki D. K.

Court Clerk Stephen

**C. W. MEOLI**

**JUDGE**



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