



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NUMBER 646 OF 2015

IN THE MATTER OF THE ESTATE OF THE LATE PATRICIA AMELIA LUCKHURST

RULING

1. The application before me is the summons dated 8th November 2019 brought under **Section 47 of the Law of Succession Act Rules 73 of the Probate and Administration Rules; Order 51 of the Civil Procedure Rules and all enabling laws.**

2. The application Lorraine Estelle Luckhurst, one of the beneficiaries of the Estate of Patricia Amelia Luckhurst also known as Patricia Amelia Morrison (deceased) seeks the order:-

That the Deputy Registrar be directed to execute all the documents necessary for the transfer of the properties/assets in the names of beneficiaries.

3. She has sworn affidavit on 8th November 2019 supporting the application and further explaining the grounds on the face of the summons:-

(i) That the grant of probate was confirmed on 31st October 2018.

(ii) That as at 8th November 2019 the executrices/trustees had not transferred the estate to the beneficiaries to be detriment of the beneficiaries.

4. She deponed that one of the Executrices by name Anne Millicent Mullins had by letter to her advocates, Shapley & Barret indicated that she would not transfer the properties before the debts of the estate had been settled. According to the applicant the transfer of the assets in the certificate of confirmation of grant would not prejudice the interests of the creditors to the estate and in any event there were other assets other than the ones in the certificate of confirmation of grant out of which any debts, would be settled. She annexed to her affidavit the letter dated 3rd June, 2019 from Shapley, Barret and Company, Advocates indicating that pending reimbursement from the estate were;

(i) Funeral expenses

(ii) Memorial expenses for the services held for the deceased.

(iii) Remuneration for the deceased's employees up to the time of her death.

(iv) Legal fees pertaining to the estate.

(v) The letter also indicated that their client Ms. Anne Mullins, had also informed them that the other Executrix Ms. Flora Alexandra Evelyn had moved to Mombasa, and any transfer would require both their signatures.

(vi) Letter is stated that in order to proceed with distribution of the assets, their client the Executrix requested that the above listed items be settled.

5. The record shows that Amelia died on 26th April 2015 leaving a written Will. Grant of Probate was issued to both Executrices on 15th February 2016.

6. The two filed Summons for Confirmation of Grant on 10th April 2017.

7. On 31st October 2018 a Certificate of Confirmation of Grant was issued pursuant to the summons for confirmation of grant.
8. In the Summons for Confirmation of Grant, the executrices identified the estate, its beneficiaries and their respective shares and proceeded to distribute the same accordingly. It is noteworthy that, Amelia made provision in the will for the settlement of the above items but there is no mention of any pending bill/debts of the estate in the joint affidavit of the executrices sworn on 28th February 2017, two years after Amelia's death.
9. It is also noteworthy that despite being served, the firm of Shapley Barret for Ms. Mullins did not file any response and did not provide any evidence on the alleged outstanding unpaid bills, which in any event ought to have been settled before they filed the Summons for Confirmation of Grant leaving only the residue of the state for distribution.
10. The fact that they swore a joint two (2) years after the death of Amelia, to distribute the estate, appears sufficient evidence that no bills were outstanding by then such and any that may have been incurred subsequent to the confirmation of the grant out to have been brought to the attention of the court, with a proposal of the manner of payment of the same. As it is now, no figures have been given by Ms. Mullins, and Ms. Evelyn appears to have completed her duty when the certificate of confirmation of grant was issued. It is clearly evident that there is nothing before the court to show that there are outstanding bills to be paid.
11. The applicant has deponed that should there be any bills that are outstanding there are assets available for the settlement of such bills. That fact has not been controverted,
12. As the matter stands, nothing has been placed before court to stop the execution of the certificate of confirmation of grant made on 31st October 2018 at the behest of the two executrices.
13. The application Dated 8th November 2018 is allowed. The Deputy Registrar High be and is hereby directed to execute all the documents necessary for the transfer of the properties/assets in the names of beneficiaries.
14. No orders as to costs.

Dated, Delivered Via ZOOM this 27th day of April, 2021.

Mumbua T. Matheka

Judge

In the presence of:

Edna Court Assistant

Ms. Wanjiru for the applicant

NA for M/S Sharpley Barret & Co. Advocates

Mumbua T. Matheka

Judge