



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL & TAX DIVISION

MISCELLANEOUS APPLICATION NO. E 820 OF 2020

MARGARET RACHEL MBOGO..... 1ST APPLICANT

WALTER NYAMU KARIUKI.....2ND APPLICANT

VERSUS

THE REGISTRAR OF COMPANIES.....RESPONDENT

RULING

1. There is a dispute as to whom should be the Administrator of the Estate of the late Josphat Njoka Mbiriai (the Deceased).

2. H. L. Ong'undi J in Embu Succession Cause No. 315 of 2010 In the matter of the Estate of Josphat Njoka Mbiriai (Deceased) says as follows of the dispute:-

“28. First and foremost this Court has to determine the validity of the alleged WILL left behind by the deceased.

The reason is that if there was indeed a written WILL what was to be issued was a grant of probate for WILL, and not letters of administration as is the case here. The letters issued in succession cause No. 315/2010 will not be confirmed until the issue of the Will is determined.

29. As the court establishes the validity of the WILL the assets of the deceased's estate must be preserved.”

3. In the cause at hand, the Applicants take out proceedings against the Registrar of Companies seeking an order that he appoints Margaret Rachel Mbogo, John Murangi Muchiri, Asnath Wanjira Charles Kimata Karari, George Ndwiga Kariuki, Walter Nyamu Kariuki, Benjamin Wanjohi Karemere, Nicasio Muriithi Njoka, Joseph Njagi Kagau, Arthur Munene Mbogo and Ebrahim Ndiritu Muriithi as directors of New Embu Uhuru Garage Limited (the company). Prior to his death, the Deceased was a Director and Shareholder of the company.

4. The 1st Applicant brings the Application as an administratrix to the Estate of the Deceased.

5. Upon commencement of the proceedings, one Robert Muthara Njoka moved this Court through the Notice of Motion dated 10th December 2020 seeking to be joined in as an interested party. He cites the dispute in the succession matter.

6. Although the application is opposed, it is for allowing.

7. From the decision of Ong'undi J it is clear that the question of who should administer the Estate of the Deceased is unresolved. And while that issue is for the Succession Court and not this Court, a party that brings to this Court's attention that the person seeking to step into the shoes of the Deceased in the company seeks to do so on questioned capacity would have legitimate cause to join in this matter. This is because the Court can only make the orders sought if satisfied that the Applicants are duly authorized in the succession cause to step into the shoes of the Deceased as Shareholders and Directors.

8. The Application of 10th December 2020 is hereby allowed. Costs in the cause.

DATED, SIGNED AND DELIVERED IN COURT AT NAIROBI THIS 26TH DAY OF MAY 2021

F. TUIYOTT

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 17TH April 2020, this Ruling has been delivered to the parties through virtual platform.

F. TUIYOTT

JUDGE

PRESENT:

Rao for proposed Interested Party

Nyangoro for Applicant

Odhiambo for Registrar of Companies

Court Assistant: Nixon