



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT CHUKA
SUCCESSION CAUSE NO. 20 OF 2018
IN THE MATTER OF THE ESTATE OF THE LATE IGNATIUS MBAYA NETHANIAH (DECEASED)

AND

ROYSTON NTWIGA M'RAGWA.....APPLICANT

RULING

Introduction

1. Before this Court is the Summons for Confirmation of Grant application dated 27/07/2020. The application is brought by the Petitioner herein under the provisions of Section 71(1) of the Law of Succession Act.
2. The summons prays for orders that the letters of administration made to the Petitioner on 30/08/2018 be confirmed.

Factual Background

3. These proceedings relate to the estate of the late Ignatius Mbaya Nethaniah who died intestate on 30/10/1996.
4. The deceased was survived by the following dependants:
 - a. Phyllis Njeri Mbaya – Widow
 - b. Francis Njeru Mbaya – Son
 - c. Elizabeth Kagendo Mbaya – Daughter
 - d. Andrew Muhoro Mbaya – Son
5. The Petitioner is the brother to the deceased. According to his affidavit in support of the summons, the deceased died and left the following properties:
 - a. Land Parcel L.R. MWIMBI/MURUGI/xx
 - b. Land Parcel L.R. MWIMBI/MURUGI/xxxx
 - c. Land Parcel L.R. MWIMBI/MURUGI/xxxx

Issue for Determination

6. The issue for determination is whether the application for confirmation of the subject grant should be allowed as prayed.

Analysis

7. The Petitioner depones that identification and shares of all persons beneficially entitled to the said estate have been ascertained and all the beneficiaries have consented to the following mode of distribution:

a. Land Parcel L.R. MWIMBI/MURUGI/xx

i. Phyllis Njeri Mbaya - Whole

b. Land Parcel L.R. MWIMBI/MURUGI/xxxx

i. Royston Ntwiga M'Ragwa - Whole

c. Land Parcel L.R. MWIMBI/MURUGI/xxxx

i. Royston Ntwiga M'Ragwa – Whole

8. The Petitioner further depones that there is no estate duty payable in respect of the estate of the deceased herein.

9. On record are two consent forms both dated 27/07/2020 and signed by the beneficiaries. It is clear from the said consents that all the beneficiaries are in approval of the mode of distribution proposed by the Petitioner.

10. On 03/11/2020, the court ordered that the beneficiaries should attend the hearing of the summons on 02/02/2021. On the said 02/02/2021, the Petitioner indicated that the widow herein and her daughter were sick and hospitalized. Only Francis Njeru, one of the beneficiaries, was present in court at the hearing on 12/05/2021 and the Petitioner prayed for the summons to be allowed as prayed.

11. **Section 71(1)** of the **Law of Succession Act** provides that:

“After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.”

12. Hopefully, all the beneficiaries of the estate have been identified as required under **Section 71(2) of the Law of Succession Act**. The law requires that all the beneficiaries be present in court at the time of the confirmation of the grant see **Section 71(2)** of the Act. The beneficiaries were given a chance to attend court but some did not turn up in court. The mother and her daughter were said to be hospitalized. One Andrew Muhoro Mbaya has deponed that he lives in abroad, that is New York in the United States of America and that he is agreeable to the proposed mode of distribution. See affidavit sworn on 10/5/21 by Andrew Muhoro Mbaya notarized by John A. Benemerito, Notary Public State of New York.

13. Elizabeth Kagendo Mbaya Kagendo has also sworn an affidavit on 5/5/2021 confirming that she is a daughter of the deceased and has consented to the mode of distribution.

14. Francis Njeru Mbaya was present in court on 12/5/2021 when the summons for confirmation of grant came up for hearing and did not oppose the mode of distribution. He has further sworn an affidavit which was deponed on 10/5/2021 confirmation that he has consented to the proposed mode of distribution.

15. As for Phyllis Mbaya, medical evidence was tendered to show that she is sickly and unable to attend this court unless brought to court in an ambulance. The record shows that way back on 8/5/2015. She signed a consent to the making of grant of administration intestate to a person of equal or lesser priority. She named the person as Royston Ntwiga M'Ragwa, the petitioner in this cause. There is a Chief's letter on record dated 24/3/2015 introducing the beneficiaries. I have no reason to doubt that all the beneficiaries of the estate of the deceased Ignatius Mbaya Nethaniah have been identified and have agreed on the mode of distribution of the estate as proposed by the petitioner. I find that those beneficiaries who have not appeared in court are aware of these proceedings and have not filed any objection or protests to the confirmation of grant. I will therefore proceed to rely on the consents and the affidavits filed in court. I therefore order as follows:-

1) The grant of letters of administration issued to the petitioner Royston Ntwiga M'Ragwa on 30/8/2018 is hereby confirmed.

2) The estate shall be distributed as follows:

a. Land Parcel L.R. MWIMBI/MURUGI/xx

i. Phyllis Njeri Mbaya - Whole

b. Land Parcel L.R. MWIMBI/MURUGI/xxxx

i. Royston Ntwiga M'Ragwa - Whole

c. Land Parcel L.R. MWIMBI/MURUGI/xxxx

i. Royston Ntwiga M'Ragwa – Whole

It is so ordered.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 24TH DAY OF JUNE, 2021.

L. W. GITARI

JUDGE