



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT CHUKA

SUCCESSION CAUSE NO. 2 OF 2020

(FORMERLY MERU HIGH COURT SUCCESSION CAUSE NO. 246 OF 1995)

CONSOLIDATED WITH SUCCESSION CAUSE NO. 251 OF 2012

IN THE MATTER OF THE ESTATE OF THE LATE KANGANGI KAIRARIA

M'NDAKA KANGANGI^{1ST}.....APPLICANT/ADMINISTRATOR

MWITI M'NDAKA.....^{2ND} APPLICANT

BENEDICTOR NJIRU RIUNGU.....^{3RD} APPLICANT

MARTIN MIRITI M'NDAKA.....^{4TH} APPLICANT

CELINA KAIMENYI KIRUGARA.....^{5TH} APPLICANT

JEDIEL MURIUKI.....^{6TH} APPLICANT

ROBERT MUGENDI NABIA.....^{7TH} APPLICANT

SAULU NTHIGA MBIUKI.....^{8TH} APPLICANT

VERSUS

PETER GITONGA MUTUAMWARI...ADMINISTRATOR/^{1ST} RESPONDENT

MAJANI GARDENS LIMITED.....^{2ND} RESPONDENT

RULING

This matter came up for directions on 6/7/2021 and to confirm substitution of the 1st applicant. The counsel for the applicant informed the court that he had filed an application for the grant of letters of administration ad litem to substitute the applicant. The counsel for the applicant did not file any evidence to prove that the deceased applicant was substituted. The supporting affidavit was sworn by the 1st applicant M'Ndaka Kangani. This is the supporting affidavit in support of the summons for revocation of grant. This affidavit was sworn on 4/3/2021. Later on 6/7/2021 this court was informed that the 1st applicant had passed away. The deceased 1st applicant was the only applicant who swore an affidavit in support of the application. He never got an opportunity to give his evidence. He has not been substituted. As such it would be premature to give a ruling in the application when the mover of the application is deceased and was not heard on the application. The affidavit by the deceased applicant has made various allegations which were not substantiated as there was no evidence attached to the application as proof. He was also not heard on the allegation on the affidavit.

1. The court did not give directions on how the application would proceed. **Rule 44(3) of the Probate and Administration Rules** provides that upon filing of summons for revocation of grant and affidavit, the court shall proceed to give directions on the person to be served with the application. The applicant is then required to file evidence of service on the persons so directed. The court will then proceed to hear the matter or give appropriate directions on how to proceed.

For the reasons that the applicant is now deceased and no directions were given under Rule 44 of the Probate and Administration Rules, I find that no orders can be issued in the application.

In the circumstances I direct that the applicant be substituted within 30 days. I will then proceed to issue direction on the application.

Dated, signed and delivered at Chuka this 27th day of July 2021.

L.W. GITARI

JUDGE

Order:

Mention on 2/11/2021.

L.W. GITARI

JUDGE

27/7/2021