



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT VIHIGA**

**SUCCESSION CAUSE NO. 80 OF 2021**

**IN THE MATTER OF THE ESTATE OF LAWRENCE MULUHYA ALUGAH (DECEASED)**

**RULING**

1. When the application for revocation of grant, dated 7<sup>th</sup> August 2017, came up for hearing on 8<sup>th</sup> July 2019, the parties resolved it by consent in the following terms:

- (a) That the grant of letters of administration dated 13<sup>th</sup> September 2016 was revoked;
- (b) That afresh grant was to issue to Beatrice Mugalitsa Tsiavonga and Joseph Idalia Muluhyia;
- (c) That the summons for confirmation of grant dated 28<sup>th</sup> April 2017 be marked as withdrawn;
- (d) That Beatrice Mugalitsa Tsiavonga file a fresh application for confirmation of grant, within fourteen days;
- (e) That Joseph Idalia Muluhyia file an affidavit of protest to the proposals on distribution to be made in the confirmation application, if that was necessary; and
- (f) That the matter be mentioned for compliance.

2. When the matter was mentioned on 12<sup>th</sup> November 2019, there had been no compliance with the consent orders of 8<sup>th</sup> July 2019, for the Deputy Registrar was yet to issue a fresh grant of letters of administration intestate to the two new administrators, and, ostensibly, for that reason the two administrators were yet to file their application for confirmation of grant. What transpired on the date for mention, was that Mrs. Muleshe, for Beatrice Mugalitsa Tsiavonga, had filed a summons, dated 15<sup>th</sup> July 2019, seeking leave to cease acting for her client. That application was heard on 18<sup>th</sup> February 2020, where it was allowed by consent.

3. After the application by Mrs. Muleshe was allowed, Ms. Namenge, for Joseph Idalia Muluhyia, sought directions for disposal of the summons dated 7<sup>th</sup> August 2017. The directions were given on 27<sup>th</sup> October 2020, for disposal of the said application by *viva voce* evidence. The oral hearing happened on 21<sup>st</sup> July 2021, and I am meant to be writing a ruling on the said application.

4. The proceedings conducted on 21<sup>st</sup> July 2021 were completely needless, for the application dated 7<sup>th</sup> August 2017 was compromised on 8<sup>th</sup> July 2019. That application is no longer pending, and what should have been done was compliance with the terms of the consent of 8<sup>th</sup> July 2019 as outlined in paragraph 1 of this ruling. The Deputy Registrar should have processed a grant of letters of administration intestate, in terms of the said consent, after which the new administrators were to file for confirmation of their grant. The court was misled on 18<sup>th</sup> February 2020, to give directions on the revocation application, which had ceased to pend on 8<sup>th</sup> July 2019.

5. In view of what I have stated above, the orders that I shall make in the circumstances are:

- (a) That I direct the Deputy Registrar to process a grant of letters of administration intestate forthwith, in terms of the orders of 8<sup>th</sup> July 2019;**

**(b) That I hereby vary the said orders, with regard to the filing of the summons for confirmation of grant, and direct that either of the new administrators is at liberty to file the said application, and the other party will then be at liberty to file and serve a protest to the summons, if need be; and**

**(c) That the matter shall be mentioned, on a date that I will allocate at the delivery of the ruling, for compliance and directions on the disposal of the application to be filed under (b) above.**

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 26TH DAY OF NOVEMBER 2021**

**W MUSYOKA**

**JUDGE**