



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAMIRA

PROBATE & ADMINISTRATION CAUSE NO. 213 OF 2015

IN THE MATTER OF THE ESTATE OF JOASH MANYARA MAOGA----(DECEASED)

BETWEEN

RAEL NYABOKE MANYARA.....PETITIONER/ADMINISTRATIX

- VRS -

1. DAVID KOMBO MANYARA.....1ST PROTESTOR/APPLICANT

2. ANDREW BARONGO MANYARA.....2ND PROTESTOR/APPLICANT

RULING

These proceedings relate to the estate of Joash Manyara Maoga who died on 8th February 2008 domiciled in Kebirigo within the Republic of Kenya. The summons that are before this court for determination raise two contentious issues to wit, administration of the estate and distribution of the assets.

The Grant of Letters of Administration Intestate were issued to Rael Nyaboke Manyara on 4th January 2016. Thereafter on 2nd March 2016 a summons for revocation of that grant was filed by David Kombo Manyara and Andrew Barongo Manyara herein treated as the protestors/applicants. My predecessor Nagillah J, now retired, started hearing the evidence of the parties in the summons for revocation but retired before he could conclude the case. In the meantime, on 25th August 2017 the Administratrix applied for confirmation of the grant. It was when parties came before on 17th July 2018 that it transpired that the hearing of the summons for revocation had not been concluded and determined that I ordered that the same be heard on 27th September 2018. However, come that day noting that the Administratrix was the widow of the deceased who ranked higher than the applicants in order of priority this court found that the order that best commended itself was not to revoke the grant but to hear the parties on the application for confirmation of the grant. In so ruling, I was guided by **Section 66 of the Law of Succession Act** which states: -

“66. Preference to be given to certain persons to administer where deceased died intestate

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

(a) surviving spouse or spouses, with or without association of other beneficiaries;

(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

(c) the Public Trustee; and

(d) creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.” (Emphasis mine).

The powers and duties of persons appointed to administer the estates of deceased persons are clearly set out in **Sections 82 and 83 of the Law of Succession Act**. Moreover, **Section 55 (1) and Section 82 (b) (ii)** make it very clear that: -

“55 (1) No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets, or to make any division of property, unless and until the grant has been confirmed as provided in section 71.” (Underlining mine).

82 Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—

a.

b. to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best:

Provided that— Provided that—

i.

ii. no immovable property shall be sold before confirmation of the grant.”

The estate of the deceased in this cause mainly comprises of immovable property and in my understanding the dispute is in the distribution of the immovable property and the summons for revocation were brought on the misconception that the person who holds the grant is entitled to a bigger say in the mode of distribution. That is however far from the truth as the court cannot confirm the grant unless and until it is satisfied that all the beneficiaries have consented to the confirmation of the grant as well as to the mode of distribution – see **Rules 40 and 41 of the Probate and Administration Rules**. The court is also guided by **Section 71 of the Act**. The Act therefore contains checks and balances that ensure the administrator of the estate exercises and performs her powers and duties within the law. It is for that reason that I still hold and maintain that in this cause other than protracting the dispute and delaying the finalization of the proceedings, the application for revocation will not serve any purpose. However, having heard and considered the evidence of the parties and the submissions of their Counsel, I am persuaded that there is need to bring in more administrators the deceased having had more than one house and so as to ensure that the interests of all those who are beneficially entitled are guarded. In the circumstance the grant issued to **RAEL NYABOKE MANYARA** shall be brought forth to court to be rectified to include the names of **EBISIBA NYAGETARI MANYARA** (the widow in the first house) as well as the two applicants **DAVID KOMBO MANYARA** and **ANDREW BARONGO MANYARA** who are sons of the deceased. I do this in accordance with **Section 66 of the Law of Succession Act** which as stated earlier vests in this court the final discretion as to the person or persons to whom a grant of letters of administration shall be made but of course guided by the order of preference set out in that section.

As for the confirmation of the grant and distribution of the assets, the beneficiaries have in their evidence and submissions expressed the desire to settle the issues through mediation. **Article 159 (2) (c) of the Constitution** bestows upon this court an obligation to promote Alternative forms of Dispute Resolution. For that reason, this court shall uphold the wishes of the beneficiaries and refer the issue of distribution to mediation. However, should parties fail to reach an agreement this court shall consider the evidence adduced by the parties and the law and make a judgement on the confirmation of the grant and the mode of distribution of the assets.

In the premises, I make orders as follows: -

- 1. That the Deputy Registrar shall call for the grant issued to RAEL NYABOKE MANYARA who shall within 21 days of this order be required to produce it to the Deputy Registrar who shall cause it to be rectified so as to include the persons referred to in the body of this ruling.**
- 2. That the Deputy Registrar shall within the time prescribed for that purpose process this file for purposes of referring it to mediation (Court Annexed).**
- 3. That the Deputy Registrar shall upon opening a mediation file and causing it to be entered in the register return this file to my chambers so that in the event the parties do not reach an agreement it can write judgement.**

It is so ordered.

Signed, dated and delivered at Nyamira this 12th day of March 2020.

E. N. MAINA

JUDGE