



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 2706 OF 2009

IN THE MATTER OF THE ESTATE OF MUNGAI MUCHERU – (DECEASED)

STEPHEN MUCHERU MUNGAI.....ADMINISTRATOR/APPLICANT

VERSUS

NAOMI WANJA MUCHIRI.....ADMINISTRATOR/RESPONDENT

RULING

1. The deceased Mungai Mucheru died intestate on 15th May 1992 at Ndenderu in Ruaka. He left one parcel of land, Kiambaa/Ruaka/488 measuring about 1.01 Ha. On 31st December 2009 his widow Beatrice Wanjiku Mungai petitioned for the grant of letters of administration intestate. On 10th May 2020 she obtained the grant. When she applied for the grant to be confirmed, her son Stephen Mucheru Mungai (the applicant) protested. He claimed not to have been involved in the entire proceedings, and that the proposed distribution had excluded him.
2. On 31st May 2016, following the death of the petitioner on 29th November 2015, the court appointed the applicant and his sister Naomi Wanja Muchiri (the respondent) as an administrator in substitution.
3. It does appear that on 9th November 2016 the application for confirmation that had been filed by the petitioner was granted, and she was, in the distribution, ordered to hold the deceased's parcel of land in trust of her children, except the applicant.
4. On 30th May 2017 the applicant applied to have the certificate of confirmation revoked because it was a nullity, having been issued to the petitioner who was deceased. He stated that the fact of death had not been brought to the attention of the court.
5. On 1st October 2018 the court was informed that the application for revocation had been withdrawn. The applicant was on that day appointed a co-administrator.
6. The present application dated 10th April 2019 by the applicant seeks that his co-administrator (the respondent) be directed to sign and execute all the necessary documents over Kiambaa/Ruaka/488 –

“as per the certificate of confirmation of grant issued on 9th November 2016 and amended on 18th October 2018.”

In the alternative, the Deputy Registrar be made to execute the documents. The said certificate of confirmation indicates that the two administrators to hold the parcel of land for the named beneficiaries.

7. The application was opposed by the respondent. According to her the basis upon which the applicant extracted the said certificate of confirmation was not clear, as there had been no application made or granted to rectify or amend the certificate of confirmation issued in respect of the petition.

8. When the grant was confirmed on 9th November 2016 to the petitioner, she had died on 29th November 2015. No application had by that time been made to substitute her. The court was not made aware that the petitioner had died.

9. On the court's own motion, under **section 47** of the **Law of Succession Act (Cap. 160)** and **rule 73** of the **Probate and Administration Rules**, I nullify the proceedings of 9th November 2016 and the certificate of confirmation issued on that day.

10. Now that the applicant and the respondent are co-administrators of the estate of the deceased, I direct them, or any of them, to file and serve on all the beneficiaries of the estate of the deceased an application for the confirmation of the grant. This should be done within 30 days from today. In the application they would propose how the estate of the deceased should be shared. Upon service each beneficiary shall have 21 days to file a response and make own proposal. The matter shall be mentioned on **30th June 2020** for directions.

11. Consequently, the application dated 10th April 2019 was misconceived and is dismissed with costs.

DATED and DELIVERED electronically, following consent of the parties, at NAIROBI this 30TH day of APRIL 2020.

A.O. MUCHELULE

JUDGE