



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

SUCCESSION CAUSE NO. 01 OF 2018

IN THE MATTER OF THE ESTATE OF MIRIAM SHAIB MOHAMED (DECEASED)

Coram: Hon. Justice R. Nyakundi

Mr. Nyongesa advocate for the Applicant

RULING

Introduction

This Probate and Administration cause is based on the **Estate of Miriam Shaib Mohamed** who died on 18.8.2017 following her death, one **Uwe Dieter Siegrist** petitioned for Grant of Letters of Administration on 27.12.2017. That pending confirmation of Grant of Letters of Administration **Uwe Dieter Siegrist** also passed on at Afya International Hospital on 29.3.2019. It is clear from the evidence that the initial interim Grant of Letters of Administration issued to the deceased on 31st July 2018 has become inoperative and incapable of being used as an instrument to administer the intestate Estate.

The Law

Section 5 of the Law of Succession Act states as follows:

“Any person who is of sound mind and not a minor may distribute of his free property by Will.

(3) Any person making or purporting to make a Will shall be deemed to be of sound mind for the purpose of this section unless he is, at the time of executing the Will, in such a state of mind, whether arising from mental or physical illness, drunkenness or from other cause as not to know what he is doing.”

An executor under the Law of Succession is an individual appointed to administer the estate of the deceased person who makes a Will or by an order of the Court. The executor’s main duty under the Act is to carry out the instructions and wishes of the deceased person’s estate.

Whether the Grant of Letters of Administration should be revoked. It is undisputed that the deceased **Uwe Dieter Siegrist** had petitioned for Letters of Administration against the Estate of **Miriam Shaib Mohamed**. There is cogent evidence that before confirmation of the said Grant of Letters, by the Court, unfortunately the grant holder also passed on soon after the petition. It is also clear from the record that preceeding the confirmation of Grant the deceased by his Will directed that **Benjamin Mwambogo** be the Executor of the residual Estate. In the submissions **Mr. Nyongesa** Learned counsel for the applicant invoked the Courts’ jurisdiction pursuant to Section 76 (e) of the Act and Section 20 of the 5th schedule for orders to have the Grant of Letters issued to **Uwe Dieter Siegrist** revoked and in its place, the deceased Will dated 21st December 2017 in favour of **Benjamin Mbogo Mwambogo** be effectuated as the executor of the whole of the estate of deceased.

The executor of the Will of the deceased is the only person entitled upon the Grant of Probate or any legal authorization the power to administer the Estate of the deceased. Under the, provisions of Section 45 of the Law of Succession, this Court exercises discretion to order that the validity of the Will of the deceased **Uwe Dieter Siegrist** revokes any Grant of Letters of Administration initially issued to the deceased. The position of the Court therefore is that under Section 76 of the Act the Grant of Letters of Administration issued to **Uwe Dieter Siegrist** has become useless and inoperative by virtue of his demise.

As of now, it will suffice for this Court to issue an order for revocation of the initial Grant of Letters of Administration and in its place the mode of administration of the Estate shall be vested in the executor of the Will **Benjamin Mwambogo**.

The Decision

On the facts of this case, the deceased and his late wife **Miriam Shaib Mohamed** were never survived by any other dependants i.e. siblings or children. The route that appears most appropriate under Rule 73 (1) as read in conjunction with Section 11 and 76 of the Law of Succession Act the following orders do issue:

(1). That in terms of Section 76 (e) of the Act the initial Grant of Administration issued to the deceased be and is hereby revoked and in its place by reason of special circumstances it appears last Will Testament and on expediency appointed Benjamin Mbogo Mwambogo as the sole executor of the estate.

(2). I would adopt the view and submissions made by Mr. Nyongesa and the relevant supporting documents to that effect including the relevant statutory provisions under the Act.

(3). As a consequence of all this the application dated 25.6.2019 is hereby allowed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 29TH DAY OF MAY 2020

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R. NYAKUNDI

JUDGE