

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 798 OF 2013

IN THE MATTER OF THE ESTATE OF JEREMIAH KAMAU MUCHIRI (DECEASED)

RULING

1. On 26th October 2020, Peter Wainaina and Elizabeth Waithera appeared before me on an application dated 2nd December 2020. They informed me that they were withdrawing that application, and that they had already filed a consent to that effect, dated 21st October 2020. I acceded to that request, based on that consent, and marked the application, dated 2nd December 2020, as withdrawn.

2. Thereafter, Peter Wainaina asked for authority to administer the estate, on grounds that the estate was being wasted. He stated that he wished to administer the estate jointly with Elizabeth Waithera. He said that the deceased was his father. Elizabeth Waithera, on her part, indicated that she was ready to co-administer the estate with Peter Wainaina. She stated that Peter Wainaina was her brother, since the deceased was her father. Peter Wainaina stated that he had siblings who never come to court. Before either granting or denying the orders orally sought by Peter Wainaina, I decided to first of all peruse the record.

3. The deceased herein, Jeremiah Kamau Muchiri died on 9th February 2013. A letter from the Assistant Chief of Mwamba Sub-Location, dated 13th September 2013, indicated that he was survived by six individuals, whose relationship with the deceased was not indicated, but who I presume were his children. That is to say Peter Wainaina, Joseph Muchiri, Francis Ndungu, Elizabeth Waithera, Gladys Muthoni and Milika Mugure. Representation to the estate was sought by Peter Wainaina Kamau, in his capacity as son of the deceased, and he listed the six individuals in the Assistant Chief's letter as the survivors of the deceased. Letters of administration intestate were made to him on 21st February 2014, and a grant was issued to him, dated 26th February 2014.

4. An application was mounted in the cause on 7th July 2014, vide an application, dated 4th July 2014, seeking revocation of the grant made on 21st February 2014, principally, on grounds that the administrator obtained the same secretly, and failed to make disclosures of certain assets, among other allegations. The said application was canvassed by way of written submissions, and a ruling was delivered on 16th November 2015, revoking the grant made to Peter Wainaina Kamau on 21st February 2014. New administrators were appointed, being Peter Wainaina, Joseph Muchiri Kamau and Elizabeth Waithera. Joseph Muchiri Kamau and Elizabeth Waithera were directed to apply for confirmation of the grant made on 16th November 2015. A grant of letters of administration intestate was subsequently issued in the names of the new administrators, dated 16th December 2015.

5. Joseph Muchiri Kamau and Elizabeth Waithera Njoroge filed a summons for confirmation of grant, dated 18th December 2015, on 22nd December 2015. Peter Wainaina Kamau opposed the proposals made in that application, and filed an affidavit of protest. That application is still pending.

6. While the summons for confirmation of grant was still pending, Joseph Muchiri Kamau and Elizabeth Waithera Njoroge filed a summons, dated 2nd December 2019, seeking revocation of the grant made on 16th November 2015, and that thereafter the two of them be appointed administrators. They sought the removal of Peter Wainaina Kamau as administrator, for various reasons. It is the application dated 9th December 2019 that Peter Wainaina Kamau and Elizabeth Waithera Njoroge withdrew on 26th October 2020.

7. It with the above background in mind that I will proceed to decide the request made by Peter Wainaina Kamau and Elizabeth Waithera Njoroge.

8. The court appointed administrators on 16th November 2015. Those administrators are still in office, for their grant has not been revoked, neither have they been removed from administration. I, therefore, do not understand the basis upon which Peter Wainaina Kamau and Elizabeth Waithera Njoroge are asking me to appoint them administrators. Both of them were appointed on 16th November 2015. There is no vacancy in the office of administrator. Furthermore, there are other survivors of the deceased, who ought to have a say on appointment of administrators and distribution of the estate. Peter Wainaina Kamau and Elizabeth Waithera Njoroge cannot act or behave as if they are the only children of the deceased, for all of the deceased must be involved in this process. Any process undertaken excluding any of them would be a nullity and a waste of judicial time.

9. I shall, therefore, not accede to the request by Peter Wainaina Kamau and Elizabeth Waithera Njoroge. Let the parties concentrate on prosecution of the pending application for confirmation of grant, dated 18th December 2015. I shall at the delivery of this ruling allocate a date for the hearing of the confirmation application, at which hearing I shall expect that all the six surviving children of the deceased be in attendance. Peter Wainaina Kamau and Elizabeth Waithera Njoroge shall ensure that the other survivors of the deceased are served with notice of the hearing date that I shall allocate for the confirmation application.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 20th DAY OF November, 2020

W MUSYOKA

JUDGE