



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITUI

SUCCESSION CAUSE NO. 222 OF 2015

IN THE MATTER OF THE ESTATE OF IVULI KINYILI DECEASED)

AND

IN THE MATTER OF THE CHIEF MAGISTRATE'S COURT

AT KITUI IN PROBATE & ADMINISTRATION CAUSE NO. 121 OF 2004

FREDRICK NZOKA MUASYA.....APPLICANT

VERSUS

KAVINYA IVULI.....RESPONDENT

RULING

1. **Fredrick Nzoka Muasya**, the Applicant approached this Court pursuant to **Section 47** of the **Law of Succession Act, Rule 59** and **73** of the **Probate and Administration Rules** seeking an order that the Deputy Registrar of the Court be directed to sign summons for confirmation of grant in this cause and to sign, execute and/or endorse any other necessary document to complete the process of administration of the Estate of the Deceased **Ivuli Kinyili**.

2. The Application is premised on grounds that the Ruling of the Court dated **17th April, 2018**, the order confirming the grant was set aside and certificates of confirmation of the grant cancelled; the Respondent was ordered to file fresh summons for confirmation of grant within 30 days, to include all the beneficiaries as well as creditors to the Estate of the Deceased; The Respondent is and has been aware of the Court order but has on numerous occasions stated before Court that she will never file the Application for confirmation of the grant nor sign the same; the Court does not make orders in vain and there is need to complete the exercise of administration of the Estate of the Deceased; and orders sought are necessary in order to serve the ends of justice.

3. The Application is supported by an affidavit sworn by **Fredrick Nzoka Muasya**, the Applicant who depones that by an order of this Court dated **17th April, 2018** the Court set aside the order confirming the grant in **Kitui Chief Magistrates Probate and Administration Cause No. 121 of 2014** the subject matter of these proceedings; the Court cancelled the certificate of confirmation of the grant; and ordered the Respondent to file summons for confirmation of the grant within 30 days; to include all the beneficiaries and creditors of the Estate; that when the matter came up for directions the Respondent openly stated that she will not file summons for confirmation of the grant and will not sign the same; that there is need to complete the process of administration in the case by distributing the Estate properly; That the Respondent is of sound mind and has shown defiance and adamance against the Court orders; Therefore orders sought are necessary in order to serve the ends of justice.

4. In response the Respondent filed a Replying Affidavit where she deposed that the Applicant is a stranger and remains to be because he did not produce any sale agreement to prove how he claims ownership of a portion of her land; that she was not notified of the sale as required by law. As a consequence the sale became void. That she has stated a million times that she is ready to refund the money for the alleged sale of a portion of the land title number **Kyangwithya/Kaveta/622**; that being forced to execute transfer forms is the greatest injustice that can be done to a widow by a Court. That it is for that reason that she cannot file fresh summons for confirmation of grant accommodating the Applicant who is not entitled to anything from her Deceased husband's property for doing so would be validating an illegality.

5. In his submissions, learned Counsel for the Applicant, **Mr. Kalili** submitted that the Application seeks to enforce the Ruling of the Court. That it seeks an order directing the Deputy Registrar of the Court to execute necessary documents to complete the process of administration of the Estate of the Deceased as the Respondent has totally declined to execute documents in respect of execution.

6. I have taken into consideration the affidavit evidence in support of the Application and submissions by the learned Counsel for the Applicant, **Mr. Kalili**.

7. This is a matter where this Court had been asked to revoke the grant of Letters of Administration issued to the Respondent. This Court found that the Respondent had concealed the fact of existence of creditors to the Estate. Consequently the order confirming the grant was set aside and certificate of confirmation issued cancelled. In that regard the Respondent was granted 30 days within which to file summons for confirmation of the grant and to include all beneficiaries and creditors to the Estate of the Deceased. 270 days down the line the Court order has not been complied with. In her response to the instant Application, the Respondent has expressed her intolerance and contempt to the Ruling of this Court.

8. **Section 76(d)(i)(ii) and (e) of the Law of Succession Act** provides as follows:

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion— (Emphasis added)

(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—

(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or

(ii) to proceed diligently with the administration of the estate; or

(e) that the grant has become useless and inoperative through subsequent circumstances.” (Emphasis mine)

9. **Section 66 of the Law of Succession Act** provides thus:

“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.”

Despite the fact that this Court had the final discretion to identify the person who would be issued with the Letters of Administration of the Estate herein it preferred the Respondent being the surviving spouse of the Deceased. There are other beneficiaries of the Estate being the sons and daughters of the Deceased. Considering the fact that the Respondent is illiterate she must be getting advice from other members of the family. In the circumstances a neutral person would be better placed to administer the Estate.

10. As clearly stated above a Public Trustee may also be considered to administer an Estate of the Deceased. Considering the peculiar circumstances of this case the Public Trustee may be better suited to administer the Estate. In the premises, I move *suo moto* pursuant to **Section 76 of the Law of Succession Act** and grant orders as follows:

i. The Grant of Letters of Administration Intestate issued herein be and is hereby revoked.

ii. The Public Trustee is hereby directed to appear before this Court on the **22nd March, 2019** for purposes of further orders being made in respect of representation of the Estate of the Deceased.

11. It is so ordered.

Dated, Signed and Delivered at Kitui this 25th ay of February, 2019.

L. N. MUTENDE

JUDGE