



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 141A OF 1993

IN THE MATTER OF THE ESTATE OF MURUTHI MATHENGE (DECEASED)

PRISCILLA WANJIKU MURUTHI.....APPLICANT

VERSUS

JOSEPH MATHENGE THEURI MURUTHI.....RESPONDENT

RULING

The deceased Muruthi Mathenge died intestate in August 1993 leaving behind seven children; two sons and five daughters. At the time of his death, the deceased was domiciled in Kenya and his last know place of residence was Gitundu sublocation in Nyeri County.

Of the deceased's children, Benard Theuri Muruthi (herein Muruthi) who apparently was the eldest son petitioned for and was granted the letters of administration intestate of his father's estate.

In the affidavit in support of the petition, he listed himself and the following as the children of the deceased:

1. Daniel Wambugu Muruthi
2. Martha Wangechi Waiyaki
3. Priscilla Wanjiku Muruthi
4. Monica Waitherero Mugo
5. Mary Kagure Irungu
6. Lucy Waruguru Wandimi

In the same affidavit, the deceased's net intestate estate was stated to be comprising the following assets:

1. Title No. Othaya/ Kihugiru/ 1269
2. Title No. Othaya/Kihugiru/1276
3. Title No. Othaya/Kihugiru/1277
4. Savings in Kenya Commercial Bank, Othaya branch, Account No. 11312148

According to the schedule to the certificate of confirmation of grant issued on 17 October, 1997, the entire estate devolved upon Muruthi absolutely.

By a summons dated 12 September, 2017, the applicant sought to revoke the grant together with the certificate of confirmation of grant. In the meantime, she also sought to stay the proceedings in a succession cause in respect of the estate of Muruthi in the **Othaya Senior Resident Magistrates' Court**, being **Succession Cause No. 108 of 2016**.

This last prayer was provoked by the demise of Muruthi who died on 13 July, 2014 and whose estate is the subject of succession proceedings

in the magistrates' court at Othaya.

The applicant's interest in the succession proceedings at the that court is informed by the fact that, at the time of his death, Muruthi had transferred their father's entire estate into his name and therefore what initially constituted the estate of the deceased in the present cause has been turned into Muruthi's estate that is set to be distributed amongst his heirs upon conclusion of the Succession Cause in Othaya.

Alongside the summons for revocation of grant, the applicant filed a notice of motion dated 12 September, 2017 praying for an order that Joseph Mathenge Theuri Murithi, who I understand is one of the children of Muruthi be substituted as the administrator in the administration of the estate of Muruthi Mathenge. If that order is granted, the applicant sought to have the said Joseph Mathenge Theuri Murithi joined as the respondent to the proceedings she has initiated. She also sought to have the succession cause in the Othaya Magistrates' Court consolidated with the present cause for the sole reason that the assets comprising the estates in both causes are similar.

This last prayer does not appeal to me to have any foundation in law because, everything else being equal, assuming the grant and the certification of its confirmation were duly obtained, in accordance with the law, the estate of Muruthi Mathenge lost that status when it was transferred to Muruthi absolutely; for all intents and purposes, the administration of that estate was completed on devolution of the estate upon Muruthi. Until the confirmation proceedings are set aside, for one reason or another, the estate of Muruthi Mathenge stands dissipated.

The second prayer also appears to be misplaced in law. I say so because the moment an administrator dies the grant of letters of administration made to him stands revoked under section 76 (e) of the Law of Succession Act. In the words of that provision of the law, the grant becomes useless and inoperative through subsequent circumstances, in this case the death of the administrator.

It follows that an administrator cannot be substituted to administer an estate on the authority of a grant of letters of administration made to a sole administrator who has subsequently died. The proper course is, in the event of death of a sole administrator, the grant of letters made to him is revoked and a fresh one made to a new administrator, appointed by the Court.

The third prayer is tied to the second prayer to the extent that it is the position of the applicant that if Joseph Mathenge Theuri Murithi was to be substituted in place of the deceased administrator, then he ought to be the respondent in the proceedings initiated by the applicant. For reasons I have given, Joseph Mathenge Theuri Muruthi cannot be substituted as an administrator in place of his father. He could possibly be appointed an administrator if the grant made in his deceased father's name is revoked and or annulled. Yet this is not what the applicant has sought for.

If anything, I would suppose that going by the provisions of section 66 of the Law of Succession Act, the applicant's right to represent her deceased's father's estate was always equal to that of her deceased brother or any of her other siblings; in other words, none of the children had prior rights to administration of the estate over the other.

While I am not the most ideal person to advise the applicant the appropriate course she ought to have taken, I doubt there would be anything intrinsically wrong if she sought to revoke the initial grant and apply to be appointed as the administrator herself in the wake of her brother's death. To this end, the grant would be revoked not necessarily because it was obtained unlawfully (for this is yet to determined) but because it has been rendered useless or inoperative by subsequent circumstances.

Be that as it may, I would conclude that the applicant's motion dated 12 September, 2017 is misconceived. It is hereby dismissed. Costs shall be in the cause. It is so ordered.

Signed, dated and delivered in open court this 29 March, 2019

Ngaah Jairus

JUDGE