



REPUBLIC OF KENYA

IN THE HIGH COURT AT EMBU

SUCCESSION CAUSE NO. 499 OF 2009

IN THE MATTER OF THE ESTATE OF SHADRACK GITHINJI NJARUIRI (DECEASED)

ROBERT NGARI GITHINJI.....APPLICANT

VERSUS

DAMARIS CIUKUTHI GITHINJI.....1ST RESPONDENT

JACOB SHADRACK GITHINJI.....2ND RESPONDENT

PURITY MICHERE GITHINJI.....3RD RESPONDENT/PROTESTOR

RULING

A. Introduction

1. This is a ruling on the application dated 8th February 2019 seeking for the orders that this court do grant leave to ROBERT NGARI GITHINJI to substitute the deceased 2nd administrator JOYCE KANINI SHADRACK.
2. The parties opted to have the matter determined on their affidavits in this application

B. Applicants' Case

3. The applicant states that he is a son of the deceased and that the second administrator who passed on after obtained letters of administration intestate.
4. He further stated that the estate of the deceased had not been distributed and as such wishes to be substituted in place of the 2nd administrator to facilitate the distribution of the estate to the beneficiaries.

C. Respondents' Case

5. The 3rd respondent a daughter of the deceased administrator opposed the application on the grounds that the applicant had received land from the deceased measuring ten (10) acres prior to his death and is not entitled to any other share.
6. The 3rd respondent further stated that she wishes to be appointed as a co-administrator to the estate of the deceased so that she can get the share of her deceased mother for it is her entitlement.

D. Analysis & Determination

7. From the court record, it is clear that certificate of confirmation of grant was issued on the 30th May 2013 without any objection. The estate of the deceased has already been distributed. The applicant herein seeks to be included as a co-administrator to the estate of the deceased on the ground that the 2nd co-administrator has passed on.
8. The sister of the applicant is the 3rd respondent and a beneficiary. She opposes this application on the grounds that the applicant might end up getting a share larger than what was intended for them. She further seeks that she be added as a co-administrator to safeguard her entitlement from the share given to her late mother in the grant.

9. Section 81 of the Act, provides for vesting of the powers and duties of personal representatives in the survivor or survivors of a dead personal representative as follows –

‘Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executor or administrators shall become vested in the survivors or survivor of them:

Provided that, where there has been a grant of letters of administration which involve any continuing trust a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of such trust until the court has made a further grant to one or more persons jointly with him.’

10. This case is different from one when a single administrator dies and leaves the estate without an executor. Upon the death of Joyce Kanini Shadrack there are two surviving administrators who according to Section 81 should go ahead and administer the estate for they are so empowered by Section 81.

11. It is my considered view that an administrator who dies before distribution of the estate and is survived by another ought not to be substituted unless there is a good reason to do so. These sentiments were expressed by Khamoni J. As he then was in the case of **Nelson Muchangi Wachira v Dadson Githinji Wachira & another [2006] eKLR.**

12. From the grant, I note that the deceased administrator was bequeathed three (3) acres of LR. No. Mutithi/Kabiriri/11/41, half share of LR. No. Mwenia/Baricho/122, half share of LR. Mwea/Ngucwi/618 as well as half share of Kenya Commercial Bank shares.

13. For these properties, the law provides as to how they should be distributed. This particular application is for substitution and issues of inheriting the deceased administrator are not relevant.

14. The applicant has already obtained grant *ad litem* in the estate of the deceased administrator. However, I am convinced that the provisions of Section 81 of the Act should guide the court in this application.

15. The two surviving administrators should proceed to distribute the estate of the deceased as provided for by the law.

16. I find no merit in this application and it is hereby dismissed.

DELIVERED, DATED AND SIGNED IN EMBU THIS 28TH DAY OF MAY, 2019.

F. MUCHEMI

JUDGE

In the presence of: -

1st Applicant

2nd and 3rd Respondent

Mr. Ali for Thungu for Applicant

Mr. Macharia for Respondent