



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 248 OF 2002

IN THE MATTER OF THE ESTATE OF DANIEL MURITHI MANENE (DECEASED)

M'IMANENE M'RUTERE.....PETITIONER/APPLICANT

-VS-

CHARITY NKATHA MUNGANIA.....RESPONDENT

R U L I N G

1. **Daniel Muriithi Manene (“the deceased”)** to whom this Succession Cause relate died on 5th November, 2001 at Isiolo aged 41 years. He was survived by a widows, **Charity Nkatha Mungania**, and two children, **Kenneth Mutwiri Murithi and Faith Mwendwa Murithi**. He also left three properties, **Kiirua/Nkando/496, Kiirua/Nkando/259, Plot at Bura Area Isiolo** and **death gratuity** as his estate.
2. On 8th March, 2002, the widow petitioned for letters of administration vide ***Isiolo PM Succ. Cause No. 1 of 2002 (“the Isiolo Cause”)*** and the grant was issued to her on 25th November, 2002. The same was subsequently confirmed on 20th March, 2003 and the estate distributed in accordance with **section 35 of the Law of Succession Act, Cap 160 Laws of Kenya**.
3. It turned out that on 9th August, 2002, **M'Marete M'Manene (“the Petitioner”)** had lodged in this court a petition for letters of administration intestate for the same estate. In the petition, he named the survivors as, **Hellen Kanyuru M'Manene (Mother), Douglas Mutembei Murithi (son), Keneth Mutwiri Muriithi (son) and Faith Mwendwa Murithi (daughter)**.
4. Upon discovering the existence of the ***Isiolo PM Succ. Cause No. 1 of 2002***, on 14th December, 2004, the petitioner applied for the transfer of the aforesaid Isiolo Cause to this Court and for the revocation of the grant issued therein. Although the Isiolo matter was transferred to this court, that application has to-date remained un-prosecuted.
5. On 7th July, 2017, the petitioner filed an application for inhibition against the titles constituting the estate. When the matter came up before Mrima J. on 19th July, 2017, directions were made to the effect that both the application for revocation dated 14th December, 2004 and the one for prohibition dated 7th July, 2017 be heard through viva voce evidence with the parties being required to file their affidavit evidence within 30 days.
6. The petitioner seems to have filed his affidavit evidence but not so for **Charity Nkatha Mungania**, the respondent. When the parties appeared in court on 23rd October, 2017, they told the court that the respondent was seriously sick and was hospitalized. The matter was then adjourned to 17th January, 2018 for hearing when the court was informed that the respondent had sadly passed away on 3rd December, 2017. The court directed that an application for substitution be filed within 30 days.
7. On 23rd February, 2018, the petitioner filed yet another application to be appointed the administrator of the estate of the deceased and for the revocation of the grant issued to the respondent. The application was responded to vide a Replying Affidavit of **Kenneth Mutwiri Muriithi** sworn on 21st March, 2018. On 11th April, 2018, the court directed the parties to file their written submissions on that application. None of the parties filed any submissions.
8. Having considered the application, two things arise; Firstly, since there has been no substitution of the respondent, no orders can be validly made as sought. Secondly, the application is on all fours with the petitioner’s application dated 14th December, 2004 which is yet to be prosecuted.
9. In the premises and in the interests of justice, I make the following orders:-

a) let the firm of Rimita and Company do file and serve an application for the substitution of the respondent within 14 days of the date hereof;

b) the application dated 23rd February, 2018 being similar to the one of 14th December, 2004, cannot proceed by dint of **section 6 of the Civil Procedure Code** until after the said application of 14th December, 2004 is determined. The application of 14th December, 2004 will be heard immediately after substitution and as per the directions of Mrima J. of 19th July, 2004.

This being a family matter, I will make no orders as to costs.

DATED and DELIVERED at Meru this 14th day of June, 2018.

A. MABEYA

JUDGE