



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO.96 B OF 1988

IN THE MATTER OF THE ESTATE OF JOHN KILEMI ARUYA (DECEASED)

JEREMY KAIJERA ARUYA.....PETITIONER

Versus

AYUB KOBIA KILEMI.....INTERESTED PARTY

MICHAEL KINDAMBI KILEMI.....INTERESTED PARTY

RULING

Appointment of executors and re-distribution of estate

[1] I have before me an application dated 20th December, 2016 which seeks inter alia:

(a) Revocation of grant made to Jeremy Kaijera Aruya and appointment of the Interested parties as joint executors of the will herein; and

(b) Confirmation of the grant so issued.

[2] The application is supported by the affidavit of Ayub Kobia Kilemi. Without much ado, the first limb of the application was accordingly dealt with on 22nd March, 2017 and letters of administration with will annexed was made to Ayub Kobia Kilemi and Michael Kindambi Kilemi. Accordingly, the two are formally the executors of the will herein. And that brings me to the next question. In view of the presence and the provisions of the will herein, is re-distribution sought tenable?

[3] I have perused the will and in essence it gave specific instructions *inter alia*;

(1) It identified the children of the deceased to be; Philisia N. Kilemi, Ayub K. Kilemi, Lydia M. Kilemi, Michael K. Kilemi and Moses M. Mwingirwa

(2) That the house on plot No. L.R 1181 to be sold and ¼ of the proceeds to be used to buy a shamba at Meru for his sons and the balance to be kept for the education of the children of the deceased; and

(3) All his children identified in (1) above together with their mother were to be transferred to Akithi Location- where he had two pieces of land.

Given the nature of the provisions of the will, there was absolute necessity to have given an accurate and

full account as well as an inventory of the estate properties as the basis for asking for re-distribution of the estate. But, I note that, other than making a generalized statement in paragraph 5 of the supporting affidavit, there is no specific detail on the actual status of the estate and the extent of administration by the late Jeremy. Again, as there is a valid will which was duly proved and upon which confirmation of probate was granted. For a re-distribution of such estate to be legitimate or necessary, it must be shown that;

- (1) Circumstances attending to and gifts made in the will have so substantially changed that it would be difficult to give effect to the will as made; and
- (2) All parties have agreed to the re-distribution of the estate.

Accordingly, I direct that:

- (1) The administrators shall, within 14 days of today file an accurate and full account as well as an inventory of the estate property showing the extent to which the estate had been administered by the late Jeremy and the current status of the estate property;**
- (2) All children of the deceased shall be served with the account and inventory in (1) above and shall appear before me on the next appointed date herein; and**
- (3) The request for re-distribution of the estate and confirmation of the grant herein shall be determined after (1) and (2) above have been satisfied. It is so ordered.**

Dated, signed and delivered in open court at Meru this 24th day of April 2017

F. GIKONYO

JUDGE

Ruling delivered in open Court in the presence of:-

Mwanzia for applicant

C.C Mwenda

F. GIKONYO

JUDGE