



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. 02 OF 2017

IN THE MATTER OF THE ESTATE OF NATHANIEL MAGANJO KUREKIA.....
DECEASED

AND

FAITH WANJIKU MAGANJO.....APPLICANT

VERSUS

REBEAN MURIITHI MAGANJO.....RESPONDENT

RULING

1. The applicant **Faith Wanjiku Maganjo** by a summons (General Form) seeks orders that the Kerugoya Chief Magistrate succession Cause No. 104/2000 be transferred to this Court for full hearing and final determination. That this Court be pleased to review, alter, lift and/or set aside the directions of the Chief Magistrate Hon. F. Andayi, Chief Magistrate dated 22nd November, 2016 in Chief Magistrate's Succession Cause No. 104/2000 and order that the matter do proceed to confirmation. That the Court be pleased to substitute the applicant Faith Wanjiku Maganjo as petitioner in place of Rebean Muriithi Maganjo. That the grant be confirmed as per the application dated 19th October, 2016.

2. The application is based on three grounds. The applicant is contending that the Chief Magistrate having substituted the petitioner with Rebean Muriithi Maganjo refused to confirm the grant and instead made strange orders that fresh succession matter be filed. That he thus threw the whole process in disarray and leaving the estate in danger of being wasted. That the substituted petitioner Rebean Muriithi Maganjo despite being substituted in place of the late petitioner Eunice Njeri Maganjo, has unlawfully, arrogantly, assiduously and acrimoniously refused to co-operate with the other beneficiaries towards the administration of the estate but has been bringing strangers to the land with intention to sell land which forms part of the estate. That in view of this it is necessary that the applicant be substituted in place of Rebean Muriithi Maganjo.

3. The application is supported by the affidavit of the applicant which basically reiterates the above grounds.

4. The respondent Rebean Muriithi Maganjo filed a replying affidavit sworn on 27th March, 2017. He depones that he was substituted in place of his late mother who had filed succession in the estate of his late father but died before it was finalized. He is agreeable that the orders issued by the Chief Magistrate on 22nd November, 2016 ought to be reviewed so that he continues being administrator. In the alternative if the Court is inclined to grant the application himself and the applicant to be granted joint letters of administration. His proposal on distribution is that he gets 3.35 acres.

5. I have considered the application. The applicant and the respondent are in agreement that the order issued by the Chief Magistrate on 22nd November, 2016 be reviewed.

6. I have perused the record of the lower court. On 22nd November, 2016 the Magistrate made an order that a deceased administrator is not substituted but the new administrator should file a fresh petition to administer the estate. He stated that the substitution of Rebean Muriithi Maganjo as administrator in place of the deceased administrator was made in error. The intended administrator may apply for revocation of the earlier grant and for a new grant to be issued in his name.

7. I have considered the order. That applicant has no objection to the respondent and herself being joined as joint administrators. I order that the applicant and Rebean Muriithi Maganjo be joint administrators.

8. The only issue in dispute is the distribution of the estate. The applicant submits that all the beneficiaries had filed a consent which they had all signed. The consent was never adopted as the order of the Court. The grant was not confirmed. Rebean Muriithi Maganjo who was substituted as the administrator of the estate in place of the deceased administrator had obtained letters of administration '*de bonis non*' on 16th February, 2016. Under **Section 3 of the Law of Succession Act** a personal representative means the executor or administrator of a deceased person. Rebean Muriithi Maganjo by virtue of letters of administration '*de bonis non*' is legally the administrator of the estate of the deceased. He is the personal representative of the estate of Eunice Njeri Maganjo now deceased. In issuing the order that the substitution of the administrator Rebean Muriithi was made in error, no provision of law was cited.

Letters of administration, '*grant de bonis non*' are issued where the administrator dies and leaves behind an estate which has not been administered. The second administrator is called the '*administrator de bonis non*' and distributes the remaining assets. This grant is issued where the administrator dies. The grant must be obtained when the sole or last surviving personal representative of a deceased's person estate dies after taking out the grant of representation but before completing the administration. The estate of the deceased had not been distributed. It is in the interest of justice that the administrator of the Estate who was substituted proceeds to finalise the distribution of the estate. I find that by ordering the administrator to file a fresh suit would be to prolong litigation. The administrator who was substituted would file a fresh suit and yet he was substituted to take over the administration in this cause. This matter has been pending. It ought to be concluded expeditiously. I find the substituted administrator should proceed and have the matter concluded.

I find that the application has merits. I allow prayer 1 of the application and order that the order issued by Hon. F. Andayi Chief Magistrate dated 22nd November, 2016 be set aside. The matter shall proceed for confirmation of grant. The application by the applicant Faith Wanjiku Maganjo that she be a joint administrator with Rebean Muriithi Maganjo was not opposed. I will therefore grant the prayer 4 of the application and order that the two Faith Wanjiku Maganjo and Rebean Muriithi be joint administrator.

This matter was pending confirmation of grant in the lower court. I am of the considered view that there is no reason why the matter should be transferred to this court at the stage where it has reached. The lower court should hear the matter to its conclusion. I therefore decline to order that the matter be transferred to this Court. I direct that the matter be heard before the Chief Magistrate's Court to its logical conclusion. The upshot is that:

a. The Succession Cause No. 104/2000 shall proceed to full hearing and final determination before the Chief Magistrate's Court.

b. The order dated 22nd November, 2016 issued by Hon. F. Andayi in Kerugoya C.M. Succession 104/2000 is set aside.

c. Faith Wanjiku Maganjo and Rebean Muriithi Maganjo shall be joint administrators.

d. The application for confirmation of grant dated 16th October, 2016 in C.M. Succ. Cause 104/2000 be heard and determined in the Chief Magistrate's Court Kerugoya.

Dated and delivered at Kerugoya this 20th day of April, 2017.

L. W. GITARI

JUDGE

Read out in open court,

Parties present

Court Assistant Naomi Murage, by me this 20th day of April, 2017.

L. W. GITARI

JUDGE

20.4.2017