



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**SUCCESSION CAUSE NO.375 'B' OF 2006**

**IN THE MATTER OF THE ESTATE OF MACKENZIE MAJANGA SHIVACHI – DECEASED**

**AND**

**1. EDWIN NGAIRA MACKENZIE**

**2. BASIL MAJANGA MACKENZIE.....PETITIONERS/RESPONDENTS**

**VERSUS**

**1. MONICAH K. MACKENZIE**

**2. HILDAH MACKENZIE.....OBJECTORS/PROTESTORS**

**RULING**

1. This succession cause came up for hearing on 4<sup>th</sup> November, 2016 wherein the objectors/protestors were seeking for orders that:

(1) the grant of letters of administration issued to Edwin Ngaira Mackenzie on 29<sup>th</sup> November, 2009 be revoked and/or annulled and that the applicants be admitted as petitioners/administrators

(2) the applicants' summons for revocation and cross-petition for grant of letters of administration be allowed and the applicants be allowed to confirm distribution in terms of paragraph 7 of the affidavit of protest to confirmation.

The two applications were opposed by the 1<sup>st</sup> petitioner Edwin Ngaira Mackenzie vide his replying affidavit deponed on 26<sup>th</sup> October, 2016.

2. The background of the case is as follows:-

A grant of letters of administration was issued on 29<sup>th</sup> November, 2007 to Edwin Ngaira Mackenzie and Rebecca Inyanya Mackenzie. The two then filed summons for confirmation of grant but the family members failed to agree on the mode of distribution. The matter was stood over generally on 29<sup>th</sup> April, 2009.

Later, the 2<sup>nd</sup> administrator, Rebecca Inyanya Mackenzie died on 4<sup>th</sup> August, 2014. A brother to the 1<sup>st</sup> administrator, Basil Manjanga Mackenzie filed an undated application to substitute his deceased mother. The application has not been heard to date.

On 9<sup>th</sup> July, 2015, the matter was dismissed by the court for want of prosecution. On 15<sup>th</sup> February, 2016, the objector/protestor Monica Mackenzie filed an application to reinstate the matter. The application was allowed on 16<sup>th</sup> June, 2016.

However, before the matter was reinstated Monica Mackenzie had on 1<sup>st</sup> February, 2016 filed summons for revocation of grant/cross-petition for grant of letters of administration dated 25<sup>th</sup> January, 2016. The said application was filed together with a protest to confirmation of grant dated 25<sup>th</sup> January, 2016. The protest was against the grant issued on 29<sup>th</sup> November, 2007. Both applications were opposed by the 1<sup>st</sup> administrator Edwin Ngaira Mackenzie vide his replying affidavit dated 26<sup>th</sup> October, 2016. The matter was then given a hearing date on 4<sup>th</sup> November, 2016 when it was heard by Justice C. Kariuki. Monica Mackenzie testified for the objectors/protestors while Edwin Mackenzie testified for the petitioners/respondents. The evidence touched on both the issue of revocation of grant and mode of distribution of the estate. The advocates for the parties then agreed to file written submissions. Justice Kariuki was then transferred and I was called upon to write the judgment.

3. Upon carefully going through the court file, I have noted the following things:

*(1) The 2<sup>nd</sup> administrator Rebecca Inyanya Mackenzie has not been substituted though there is a pending undated application by Basil Mackenzie to substitute his deceased mother as an administrator.*

*(2) The application for reinstatement of the succession cause was filed in court on 15<sup>th</sup> February 2016 and it was granted on 16<sup>th</sup> June 2016. It is then apparent that both the summons for revocation of grant and the protest were filed before the suit was reinstated. The applications are, to say the least, non-starters because at the time that they were filed on 25<sup>th</sup> January 2016, there was no case pending before court, the same having been dismissed for want of prosecution.*

*(3) The protest is against the grant issued to the two administrators on 29<sup>th</sup> November, 2007. The 2<sup>nd</sup> administrator is dead. A protest cannot be filed against a deceased administrator. The court cannot confirm grant of letters of administration where one of the administrators has died in the course of succession proceedings. In such circumstances, a fresh grant ought to be sought before a protest is filed. The hearing herein in relation to the protest was thereby an exercise in futility.*

*(4) Though the application for revocation of grant was in order, however, it was filed before the matter was reinstated by the court and is therefore improperly before the court.*

4. In the foregoing the applications that are before the court are irregular. Both applications for revocation of grant of letters of administration and the protest dated 25<sup>th</sup> January, 2016 are hereby struck out with no order as to costs.

5. I have noted that there is no payment receipt on the application for substitution by Basil Mackenzie, neither is his application stamped by the court to show that it was received. I have noted that there was some confusion as to the proper procedure to be followed in the case. I hereby make the following directions:

(1) The objectors, Monica Mackenzie and Hilda Mackenzie to file a fresh application for revocation/annulment of grant.

(2) Edwin Ngaira Mackenzie as the remaining administrator to respond to the application.

(3) Basil Mackenzie to file an application to substitute his deceased mother, which application will be considered together with the application for revocation/annulment.

(4) It is only after a grant of letters of administration is issued and after the person(s) granted the grant files a proposed mode of distribution that any person(s) dissatisfied with the proposed mode of distribution is/are to file a protest.

Orders accordingly.

**Delivered, dated and signed at Kakamega this 13<sup>th</sup> Day of April, 2017.**

**J. NJAGI**

**JUDGE**