



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1025 OF 2007**

**IN THE MATTER OF THE ESTATE OF GEORGE KURIA MACHARIA - (DECEASED)**

**JOHN KIMANI THIONGO.....APPLICANT**

**VERSUS**

**NANCY NJERI THIONGO.....1<sup>ST</sup> RESPONDENT**

**JAMES MACHARIA THIONGO.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The deceased Stephen Thiongo died intestate on 19<sup>th</sup> December 2005. A grant of letters of administration intestate was issued to the respondents Nancy Njeri Thiongo and James Macharia Thiongo on 18<sup>th</sup> July 2007. The deceased was survived by two houses and 10 children. On 18<sup>th</sup> September 2015 the applicant John Kimani Thiongo (one of the children of the deceased) filed this application dated 2<sup>nd</sup> September 2015 seeking to have the grant issued to the respondents revoked and/or annulled. The grounds were that the respondents had failed without reasonable cause to apply for the confirmation of the grant; they had failed to diligently administer the estate; had intermeddled with the estate; and had failed to produce to court such inventory or account as is required by law. In the affidavit sworn to support the application, the applicant stated that the respondents had failed to have the grant confirmed and the estate distributed, and were instead selling and wasting away part of the estate of the deceased. They annexed two agreements to show that the respondents were in the process of selling two properties belonging to the estate, and had received some payments.

2. The respondents opposed the application in their replying affidavit sworn on 31<sup>st</sup> March 2016. They stated that they had on 12<sup>th</sup> October 2010 and on 14<sup>th</sup> February 2012 filed application to confirm the grant and proposed a mode of distribution to which the application was opposed. They claimed that they had always wanted the estate distributed but that this had been frustrated by the numerous applications by the applicant, who had also intermeddled with properties of the estate. They further claimed that the applicant had disposed of, or attempted to dispose of, some of the properties of the estate. They alleged fraud against him.

3. It is clear to me that the estate of the deceased is crying for quick distribution so that each beneficiary can get what is due to him or her. A reading of the file shows there have been many incidents of disputes, reports to police, attacks, cases and applications among the beneficiaries over the estate of the deceased. In my view, the only way to bring all these to an end is to expedite the hearing of the pending application of confirmation to enable the estate to be distributed to the beneficiaries.

4. I agree with the applicant that it was the duty of the respondents to seek the confirmation of the grant six months after they became the administrators of the estate. They failed to act diligently in this regard. They filed the application for confirmation much later, and there was no explanation for the delay. Ordinarily, this would be enough ground under **section 76(d)** of the **Law of Succession (Cap 160)** to

revoke the grant. However, revocation will only delay and complicate the disposal of this dispute.

5. There are allegations and counter allegations of intermeddling with the estate of the deceased, and the selling of the same. I would want these allegations to be substantiated during the hearing of the application for confirmation.

6. Consequently, I allow the application in the following terms. The application for the confirmation of the grant that was dated 30<sup>th</sup> July 2015 and filed on 7<sup>th</sup> July 2015 shall, on priority basis, be heard by **Justice Onyiego**. Within 14 days from today the applicant, and any beneficiary who so wishes, shall file his/her proposed mode of distribution. The application shall be heard by oral evidence. This matter shall be placed before **Judge Onyiego** on **30<sup>th</sup> May 2017** to give suitable date of hearing. Costs shall be in the Cause.

**DATED and DELIVERED at NAIROBI this 23<sup>rd</sup> day of MAY, 2017**

**A. O. MUCHELULE**

**JUDGE**