

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 3403 OF 2005

IN THE MATTER OF THE ESTATE OF DAVID KYULI KAINDI (DECEASED)

RULING

1. On 31st July 2015, the court found that the executor had failed in his statutory duty of completing administration of the estates within six (6) months after confirmation of his grant as required by section 83(g) of the Law of Succession Act, Cap 160, Laws of Kenya. The court extended the period by a further ninety (90) days to allow him complete administration, in default of which the grant made to him stood revoked.

2. The matter was mentioned several times thereafter to confirm whether the said order of 21st July 2015 had been complied with, together with another of even date which required him to render accounts. When it became apparent to the court that there was no compliance with the order to complete administration within the extended period, the court declared that the grant made to the executor had been revoked, and directed the parties to agree on fresh administrators to be appointed by the court.

3. With respect to fresh appointment of administrators the application dated 13th January 21017 was filed herein on even date by Ann Amanga Nthale and David Kyuli Nthale, seeking to be appointed administrators of the estate of the deceased with a view to completing administration as per the certificate of confirmation of grant on record. The first applicant is a daughter in law of the deceased, while the second applicant is her son and a grandson of the deceased. The first applicant is also administrator of the estate of her husband, who was a son of the deceased.

4. The application is opposed by the executor of the will of the deceased. He states that he has the support of his siblings who have signed consent to support his appointment as personal representative of the deceased. He states that the first applicant had intermeddled with an estate property and was therefore not suitable for appointment as administrator. He mentions a case that he has brought against her, and another, over estate property, on grounds that she had sold a portion of estate property to a third party. He argues that it would be against the wishes of the family to have her appointed as administrator. He also swore a further affidavit.

5. The other reaction to the application is by Katilo Kyuli, a daughter of the deceased. She supports the spirit of the application, to the extent of appointment of new administrators excluding the administrator, but she proposes the appointment of administrators from the surviving children of the deceased. She does not propose anyone in particular but complains that she is the only child not in possession of the assets that were bequeathed to her by the deceased according to his will.

6. I directed on 2nd May 2017 that the application be disposed of by way of written submissions. The parties complied with the orders and filed written submissions. I have had occasion to read through the submissions and noted the arguments made.

7. Let me start with the proposal that the executor be reappointed. The court has in two rulings made a finding that the executor had failed in his duties as administrator, and it was on that account that his grant was revoked. His reappointment cannot in the circumstances be feasible, even if he has support of some of the survivors of the deceased.

8. Regarding the applicants, I note that there are two objections to the applicants. The first is that they are not children of the deceased, and it is argued that the estate ought to be administered by any of the

surviving children of the deceased. Most of the children of the deceased propose the reappointment of executor whom the court has decreed as having failed in his duties as administrator; while one proposes that any child be appointed save for the executor.

9. Ideally, appointment of administrators should be of persons who are willing to act as such. None of the surviving children of the deceased have indicated express willingness to act as administrators, apart from the one that the court has adjudged to have failed in the past to act as such. One has stated that it is children of the deceased who ought to be appointed, although I note that she does not expressly avail herself for such a role. I shall presume that she is willing to act as such should she be appointed.

10. As the other children have not offered themselves, I am left with only one child to appoint as such. In view of the vastness of the estate and the contests within it, I am inclined to appoint more than one administrator. The appointment of the first applicant is contested on grounds that she intermeddled with the estate property. There is matter pending before another court or that score so I shall not comment on the issue, save to say that I have not been given copy of any decision where it has been pronounced that she did interfere with such property. I do not think the first applicant should be barred merely because of a pending suit. A suit amounts to nothing more than allegations until the court makes a pronouncement on the matter. There is nothing on the second applicant. The applicants are from the family of one of the sons of the deceased. They have a stake in the estate.

11. Having taken everything into account I shall dispose of the said application in the terms that I do hereby appoint Katilo Kyuli, Ann Amanga Nthale and David Kyuli Nthale administrators of the estate of the deceased to complete administration thereof. A grant of letters of administration with will annexed shall be issued to them accordingly.

12. I note that there are prayers for the executor to account for his administration of the estate. I made orders relating to that matter on 31st July 2015. There is no need for me to make fresh orders thereon. The executor has sworn several affidavits where he has sought to give an account. If the applicants find the accounts given inadequate, then they ought to seek alternative prayers but, not the same prayers all over again. In any event the new administrators should take office first and acquaint themselves with the state of the estate before they can seek further orders.

DATED, SIGNED and DELIVERED at NAIROBI this 30TH DAY OF JUNE, 2017.

W. MUSYOKA

JUDGE