



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION MILIMANI LAW COURTS

SUCCESSION CAUSE 164A of 1983

IN THE MATTER OF THE ESTATE OF MESHACK MICHEKE

RULING

1. The Application now before the Court is said to concern the Estate of Meshak Micheke. The Deceased passed away on 1st January 1978 in Kikuyu, Kiambu District as then was. He was survived by his Widow, Eva Nyambara and five or six Children (see Chief's Letter of 2nd March 1983). The exact number is not clear. The Widow applied for Letters of Administration intestate on 6th February 1987. Only the Widow and 4 sons were named as Beneficiaries. The only asset of the Estate was a property known as Karai/Karai/332 comprising 8 acres.

2. The Certificate of Confirmed Grant was issued on 30th March 1987 and/or 4th April 1984. The Beneficiaries and their shares were set out as follows:

(i) Eva Nyambara	Karai/Karai/332	3 acres
(ii) James Nganga Micheke	“	2.25 acres
(iii) Moses Mungai Micheke	“	2.25 acres
(iv) John Kioi Micheke	“	2.25 acres
(v) Nicholas Wandunga Micheke	“	2.25 acres

3. Notwithstanding the Certificate of Confirmed grant and the advanced age of the Beneficiaries the Estate was not distributed. On 21st January 2003 the Administrator Eva Nyambara passed away. Again no steps were taken to replace the Administrator or distribute the Estate.

4. On 22nd March 2017 the daughter of the Deceased Damaris Wambui Cheche filed a Summons for Annulment of Grant. The Summons seeks annulment as well as substitution of the deceased Administrator with three new administrators namely James Nganga Micheke, Damaris Wambui Cheche and Moses Mungai Micheke. Clearly the two prayers are mutually exclusive and cannot both be made at the same time. In addition, the same Application stating that one of the new administrators should be “Moses Mungai Micheke” then informs the Court that is not his correct name and the name that appears on his National Identity Card is “Julius Moses Mungai”. Julius Moses/Moses has also filed an Affidavit on 29th May 2017 stating that he is the same person. The Letters of Administration were rectified on 4th April 2017. The Certificate of Confirmed Grant was also rectified on the same day to name the substituted administrators. The divisions for distribution remained the same.

5. The various members of the family had a family meeting. They now seek to further rectify the grant as follows:

(1) The share of Eva Nyambara to be divided between Damaris Wambui, Elizabeth Wanjiku and Janet Wambui Kioi as well as the three Beneficiaries already named;

(2) There is a further rectification sought for the share originally attributed to John Kioi Micheke to be shared out between Janet Wambui, Jesse Mungai, Nicholas Ndungu, Jack Muigai, Richard Waikwa, Eva Wanjiku and Lucy Njoki.

There is no explanation provided to the Court as to who these persons are.

6. Further, it appears that the Parties have failed and/or neglected to apply for Letters of Administration for the Estates of the two deceased Beneficiaries, Eva Nyambara and John Kioi Micheke. That essential step cannot be by-passed by means of a rectification in the grant of a

member of the older generation. Any distribution of those shares must be preceded by Letters of Administration at the very least if not a Certificate of Confirmed Grant.

7. For the Reasons set out, the prayer for rectification of the name of Moses Muigai Micheke to Julius Moses Mungai is granted. The remainder of the Summons is dismissed. The respective heirs of the two Deceased Beneficiaries are directed to Petition for letters of administration in their respective estates. Those files shall then be heard together with this file.

Order accordingly,

FARAH S.M. AMIN

JUDGE

Signed, Dated and Delivered in Nairobi this the 29th day of November 2017

In the Presence of:

Court Assistant: Patrick Mwangi

Applicants: Jesse Mungai in person