



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT SUCC. NO. 106 OF 1994

IN THE MATTER OF THE ESTATE OF JOHN KABIRO WANG'OMBE (DECEASED)

RULING

The application before me is the Summons General dated 12th April 2017 brought under rules 73 and 49 of the Probate & Administration Rules, and section 47 of the Law of Succession Act.

It seeks orders: -

That for purposes of the execution of the relevant documents in this matter the signature of Rowland Gakuo Kabiro be dispensed with and in his place the Deputy Registrar be given the mandate to execute the documents.

The application is based on the grounds that the grant was confirmed on 23rd June 2016, Rowland Gakuo Kabiro is deceased and therefore cannot sign the transmission forms RL 7 and R19 and his family has refused to make a substitution.

According to me supporting affidavit of Lawrence Kariuki Kabiro one of the administrators, he and the deceased were appointed joint administrators of the Estate of John Kabiro Wang'ombe (deceased) on 23rd February 1996 but he, Rowland Gakuo Kabiro passed on in 2004. That his beneficiaries refused to give instructions to his lawyer who withdrew from acting in 2016.

According to the certificate of confirmation of grant of letters intestate dated 23rd June 2016 Rowland Gakuo is a beneficiary of the estate. The summons for confirmation of grant was allowed without his participation consent, 12 years after his death.

The petitioner has not demonstrated what effort he has made to serve the beneficiaries to his co-administrator's estate neither has he demonstrated what will happen to his share of the estate.

The record show that one John Maina Gakuo was served with summons from the firm of K. Wachira & Co. Advocates on 3rd June 2016. It would appear that this John Maina Gakuo is related to the deceased Rowland Gakuo. Secondly the applicant is a step brother to the deceased Rowland Gakuo. As co-administrator he would be aware if there are beneficiaries.

That besides there is section 81 of the Law of Succession Act which provides-

Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them:

Provided that, where there has been a grant of letters of administration which involve any continuing trust, a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of such trust until he court has made a further grant to one or more persons jointly with him. (emphasis added)

I think as a co-administrator the applicant is not without recourse. He still retains the powers of an administrator. The application before me is prejudicial to the interests of the estate of Rowland Gakuo (deceased) because has not indicated what will happen to this share of the estate. The law does not envisage the transmission of the estate from one deceased person to another deceased person. As the surviving administrator of the estate the applicant cannot avoid the responsibilities that flow from the death of his co-administrator.

The application has been brought under the general provisions of the law for this court to invoke its inherent jurisdiction for the sake of expediency, in the interests of justice and to prevent the abuse of the court process.

However, to proceed in the manner sought would not only be an abuse of the court process, but also contrary to the interests of justice

I therefore find that the application is not merited at this stage, decline to grant the orders sought, and dismiss it with no orders as to costs.

Right of Appeal 30 days.

Dated, delivered and signed at Nyeri this 27th November 2017.

Teresia Matheka

Judge

In the presence of;

Court Assistant Hariet

Mr. Muthee for the petitioner