



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 763 OF 1997**

**IN THE MATTER OF THE ESTATE OF PETER MUIGAI RUHIU (DECEASED)**

**RULING**

1. The administrators of the estate herein, Leah Wanjiru Muigai and Joseph Ruhii Muigai, are widow and son, respectively, of the deceased, and mother and son. Their grant was confirmed on 21<sup>st</sup> May 1999. The estate has not been distributed to date in accordance with the distribution schedule approved by the court.

2. By a ruling that I delivered on 18<sup>th</sup> November 2016, I directed the administrators to complete administration of the estate herein within thirty (30) days. Rather than complete administration as ordered, one of the administrators, the widow, moved the court by an application dated 6<sup>th</sup> January 2017, that is outside the thirty (30) days that I had allowed them to complete administration, filed herein on 23<sup>rd</sup> February 2017, asking the court to redistribute the estate, saying that the same could not be distributed as ordered in 1999. The application is opposed by her co-administrator, who claims that some of the assets sought to be distributed belonged to him, some were still encumbered by a bank, some had cases in court, while some are common assets either because they are burial sites or the matrimonial home or commercial property from which the entire family derives livelihood.

3. Two issues arise from the application. One, the court had given the administrators time to wind up the administration of the estate in terms of the distribution ordered by the court in 1999. The duration given was thirty days. The said duration expired without compliance, and the applicant only moved to court after the expiration of the period given to it by the court. Secondly, the issue of the redistribution of the estate is being raised only after the court commanded the administrators to wind up administration for a lot of time had expired after the court ordered distribution. The second issue is that the two administrators are not in agreement with respect to the administration of the estate. They are acting at cross purposes. It would appear that it is this failure to see eye to eye that is responsible for the non-completion of administration.

4. Non-compliance with court orders is something that the court ought not to countenance. Indeed, in my order of 18<sup>th</sup> November 2016 I had stated that non-compliance with the orders made in the ruling delivered that day would expose the grant herein to revocation by the court on its own motion in terms of the discretion given to it by section 76 of the Law of Succession Act, Cap 160, Laws of Kenya. However, despite that caution, the administrators still did not complete administration as ordered, and if they were encountering any difficulties, they did not move the court appropriately within the time given for extension of time. I have no option but to move under section 76 and revoke the grant as the administrators clearly do not respect court orders. The administration of an estate should not go on forever and the court should not allow administrators to keep the affairs of an estate in a state of flux, and should not adopt a cavalier attitude towards court orders.

5. Regarding redistribution, I note that I had on 15<sup>th</sup> March 2017 directed that the application be disposed of by way of written submissions. The proposed redistribution is challenged and there is on record a detailed affidavit giving reasons for the opposition. The ideal way of resolving this comprehensively would be by way of oral evidence.

6. The orders that I am moved to make in the circumstances are as follows –

**a. That the grant made to Leah Wanjiru Muigai and Joseph Ruhii Muigai on 10th July 1997 is hereby revoked;**

- b. That fresh administrators shall be appointed and shall not include Leah Wanjiru Muigai and Joseph Ruhiu Muigai;**
- c. That the new administrators shall apply afresh for confirmation of the grant to be made to them;**
- d. That the matter shall be mentioned after thirty (30) days of the date herein for the purpose of appointment of administrators; and**
- e. That, for avoidance of doubt, the application dated 23<sup>rd</sup> February 2017 is hereby dismissed with no order as to costs.**

**DATED, SIGNED and DELIVERED at NAIROBI this 8<sup>TH</sup> DAY OF DECEMBER, 2017.**

**W. MUSYOKA**

**JUDGE**