

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1871 OF 1994

IN THE MATTER OF THE ESTATE OF LAWRENCE KIBUI KARIUKI (DECEASED)

SALOME NYAMBURA KARUGU.....1ST APPLICANT

MARGARET NJERI BUTT.....2ND APPLICANT

VERSUS

MICHAEL KARIUKI KIBUI.....RESPONDENT

RULING

1. The deceased Lawrence Kibui Kariuki died intestate on 30th October 1992. He left a widow Julia Agnes Gathoni Kibui alias Julia Kibue Kibui and 11 children who are all adults. The respondent Michael Kariuki Kibui is the eldest child. The applicants Salome Nyambura Karugu and Margaret Njeri Butt are two of the remaining children. There is no dispute that all are the beneficiaries of the deceased. Their mother (Julia) petitioned for the grant of letters of administration intestate. The petition was allowed on 5th November 1996 when Justice Kuloba (as he then was) made an endorsement in the file. The actual grant was not typed, signed or issued. The petition was filed with the consent of the entire family.
2. Julia died on 2nd June 2002. This is why the applicants seek to be substituted as the administrators of the estate in her place. It does appear that nothing has happened towards the administration of the estate since 5th November 1996.
3. The respondent opposed the application on two grounds. First, that since the actual grant document was not issued there was no administrator. That cannot be true as there is an order on record approving the petitioner (Julia) as the administrator of the estate. The second ground is that his consent was not sought when the application was made. The averment was not challenged. I find that the complaint is valid. As a beneficiary he ought to have been consulted, or cited.
4. I find that owing to the death of the petitioner the grant has become useless and inoperative (**section 76(e)** of the **Law of Succession Act Cap. 160** of the Laws of Kenya) and revoke it. Under **rule 73** of the **Probate and Administration Rules**, I issue a fresh grant of letters of administration intestate in the joint names of Salome Nyambura Karugu, Margaret Njeri Butt and Michael Kariuki Kibui. Further, I direct that, owing to the age of this matter, the parties, or any of them with service to the rest, shall within 30 days apply for the confirmation of the grant. I make no order as to costs.

DATED at NAIROBI this 28TH JANUARY 2016

A.O. MUCHELULE

JUDGE

DELIVERED at NAIROBI this 29TH JANUARY 2016

W. MUSYOKA

JUDGE