



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO.2678 of 2013

IN THE MATTER OF THE ESTATE OF THARIKI alias JOSEPH KAMAU (DECEASED)

REUBEN NG'ETHE KAMAU.....1ST APPLICANT

ANN WAITHIRA KAMAU.....2ND APPLICANT

JOYCE E RUGURU KAMAU.....3RD APPLICANT

VERSUS

PETER NDUNG'U KAMAU.....1ST RESPONDENT

PETER GITAU KAMAU.....2ND RESPONDENT

RULING

By an application filed 3rd December, 2015 the Respondent sought **under rules 49, 63 of the Probate and Administration Rules** and the enabling provisions of the law the following orders;

1. The *ex-parte* orders made by this Court on 28th September, 2015 be set aside and the application dated 27th January, 2015 be set down for hearing on merit;

The Applicant relied on the following grounds;

1. The said orders were made *ex-parte* without the presence of the Applicants or their Advocate on the 28th September, 2015;

2. The orders are erroneous as on 20th January, 2015 joint administration of the estate herein had been given to the 1st Applicant and the 2nd Respondent herein.

3. After the issuance of the said administration, the Court directed both the Applicants and the Respondents to agree on the mode of distribution and thereafter file summons for confirmation of grant

On 25th April, 2015 Mr. Ngigi informed the Court he served the Respondents as per the affidavit of service filed on 25th April, 2016. They were not in Court.

Mr. Ngigi for the Applicant informed the Court; The application of 14th October, 2015 is that the Court on 20th January, 2015 gave orders that the Applicants herein; Reuben Ng’ethe Kamau, Peter Ndungu Kamau are the administrators of the deceased’s estate and should file Petition for grant of letters of administration.

On 28th September, 2015 the Respondents filed an application under certificate of urgency and sought that Reuben Ng’ethe Kamau should not be an administrator. The Court issued orders appointing the Objectors as administrators and the parties to proceed with obtaining a Petition for letters of administration.

COURT ORDERS

- 1. This Court has perused the Court record and finds that it is true that this Court appointed the Applicants as administrator on 20th January, 2015 and appointed the Objectors as administrators on 28th September, 2015.**
- 2. Neither of the parties can proceed with filing the petition for grant of letters of administration for the estate of Joseph Kamau Thiriki (deceased) as neither group will obtain consents from all other beneficiaries.**
- 3. Secondly the Court notes that in the application for orders of 20th January, 2015 Peter Ndungu Kamau was appointed administrator. In the application for orders of 28th September, 2015 the very same Peter Ndungu Kamau is one of the Applicants as administrator too. He cannot be on both sides.. This is strange, unprocedural and irregular.**
- 4. Therefore both orders of 20th January, 2015 and 28th September, 2015 are vacated and the process of filing the petition is halted until further orders from the Court.**
- 5. The beneficiaries of the estate to take a hearing date for hearing and determination of who will be administrator of the deceased’s estate or pursue Court annexed mediation process.**

READ AND DELIVERED IN OPEN COURT AT NAIROBI THIS 25TH DAY OF APRIL, 2016

MARGARET W. MUIGAI

JUDGE

In the presence of;

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