

REPUBLIC OF KENYA

IN THE HIGH COURT AT KERICHO

SUCCESSION CAUSE NO.100 OF 2002

IN THE MATTER OF THE ESTATE OF KIPKOSKE ARAP

TUIMISING TECLA CHASANG TUIMISING.....APPLICANT

VURSES

HENRY KIPKURUI ROTICH.....RESPONDENT

RULING

1. This matter was scheduled for hearing of an objection by Ms. Tecla Chasang Tuimising on 20th July 2016. Mrs. Bett appeared at the hearing for the objector. There was no appearance by Counsel for the petitioner, Mr. J. K. Rono.

2. Mrs. Bett then made an oral application for the Court to exercise its inherent powers under Rule 73 of the Probate and Succession Rules to set aside a ruling made by Ang'awa J (as she was then) on 12th May 2009 (the date of the ruling is actually 19th May 2009). According to Mrs. Bett, the Learned Judge had made an order, *suo motu*, to revoke two grants, issued by Justices Visram and Koome J (as they then were) respectively on 27th November 2002 and 12th June 2007. There was an error on the part of the Court in making the order to revoke the two grants as it was seeking to revoke a grant issued by Koome, J on 12th June 2007 pursuant to a consent by both parties made in court on 11th June 2007 to the effect that the letters of administration intestate issued to the petitioner on 27th November 2002 by Visram J be revoked and a fresh grant be issued in the name of the petitioner, Henry Rotich, the objector, Tecla Tuimising, Phillip Rotich and Richard Rotich.

3. Mrs. Bett submitted that Ang'awa J had made the orders of revocation on the presumption that the grant made on 27th November 2002 had not been revoked. She therefore urged the Court to review the orders in exercise of its inherent jurisdiction and set aside the orders made on 12th May 2009 revoking the grant issued on 12th June 2007.

4. Mrs. Bett made the application in reliance on Rule 73 of the Probate and Administration Rules that grants the court power to make such orders as are necessary for the ends of justice to be met. She noted that the matter could not proceed until the orders revoking the grants had been set aside.

5. I have read the record of the Court on this matter. As submitted by Ms. Bett, the parties had recorded a consent order under which the grant of letters of administration intestate issued by Visram J to the petitioner be revoked, and a grant issued in favour of the petitioner and the objectors as administrators. The consent, recorded on 11th June 2007, was as follows:

“By consent, the letters of administration issued to Henry Kipkurui Rotich on 27th November 2002 be and is hereby revoked. Another Grant be issued to Richard Rotich, Phillip Rotich, Henry Kipkorir Rotich and Tecla Chesang Tuimising as joint administrators, The parties hereto shall be at liberty to either jointly or severally apply for the confirmation of the letters of administration notwithstanding the statutory period of six months will not have elapsed. Whoever will not be satisfied with the preferred mode of distribution to file an affidavit of protest and propose their preferred mode of distribution. Costs in the cause.”

6. It would then appear that on the Court's own motion, on 19th May 2009, Ang'awa J (as she then was), after noting that there were two grants issued in the matter, made an order revoking both the grant issued on 27th November 2002 and the grant issued on 12th June 2007 pursuant to the consent order entered into before Koome, J on 11th June 2007.

7. It is thus evident from the record that the order made revoking the two grants on 19th May 2009 was made in error. This is because the earlier grant issued to the petitioner on 27th November 2002 had already been revoked by consent. As submitted by Mrs. Bett, there is an error apparent on the record, and the matter cannot proceed further as the effect of the order of Ang'awa J was to leave the estate of the deceased without administrators who can then proceed to distribute the estate, yet letters of administration in respect thereof had been issued by consent of the parties.

8. Ideally, an application for review of orders should be made before the judicial officer who made the orders sought to be reviewed. In this case, the Honourable Justice Ang'awa (as she then was), is no longer in the judiciary. It therefore falls upon me to exercise powers of review of her orders. Accordingly, in accordance with the inherent powers of the Court and in order to meet the ends of justice as provided in Rule 73 of the Probate and Administration Rules, I hereby set aside the orders of Ang'awa J made on 19th May 2009 in which she revoked the grant issued on 12th of June 2007. The effect of this order is that the grant issued by consent of the parties on 12th June 2007 remains in force and the petitioner and objectors are jointly the administrators of the estate of the deceased herein as directed by Koome J in the consent order of 12th June 2007.

9. Either or all the petitioners jointly are at liberty to move the Court for the purpose of confirmation of the grant of letters of administration aforesaid as directed by Koome J in the consent order dated 12th June 2007.

Dated, Delivered and Signed at Kericho this 22nd day of September 2016

MUMBI NGUGI

JUDGE