

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO 867 OF 2013

**IN THE MATTER OF THE ESTATE OF ELIUD KIARIE MUMO (alias ELIUD KIARII MUMO) -
DECEASED**

JAMES ALLAN CHEGE.....APPLICANT

VERSUS

ZIPPORAH WAMBUI MUMO.....ADMINISTRATOR/RESPONDENT

J U D G M E N T

1. There is no dispute that the Applicant herein, **James Allan Chege**, is the son of the Deceased **Eliud Kiarie Mumo**. The Administrator **Zipporah Wambui Mumo** is his mother and the widow of the Deceased. She and the Deceased had 3 other children, all daughters - **Rosemary Njeri Kiarie**, **Caroline Njambi Kiarie** and **Ruth Wangari**. They are all alive and well.

2. A grant of letters of administration intestate in respect to the estate of the Deceased was made to the Administrator on 20/06/1998 and issued on 20/07/1998 vide **Thika CM Succession Cause No 182 of 1998**. That grant was confirmed on 08/1/1999 and a certificate of confirmation of grant issued on the same day. By that confirmation of grant the Applicant was totally disinherited, apparently because he was then in prison, and also because, as stated by his mother, he was a difficult son who was hostile to her and her daughters. It is common ground that he was not in prison for an offence which under the law would disentitle him to inherit any part of his father's estate. In other words, he was not in prison for killing the Deceased.

3. It is therefore not surprising that after he left prison the Applicant applied to revoke the grant by summons dated 17/07/2013 which is the subject of this judgment. In her replying affidavit the Administrator quickly admitted her mistake in disinheriting her son and offered to make amends. However, the parties have not been able to agree on fresh re-distribution of the Deceased's estate.

4. In these circumstances, there is only one proper thing to do, and that is to set aside the order of the lower court by which the grant was confirmed (and cancel the certificate of confirmation as well). This will enable the summons for confirmation of grant filed in the lower court to be heard afresh and thus accord the Applicant an opportunity to challenge the Administrator's proposed distribution in the usual way.

5. In the circumstances I will make the following orders –

(a) The order of the lower court of 08/01/199 by which the grant was confirmed is hereby set aside and the certificate of confirmation of grant of the same date cancelled.

(b) The properties comprising the estate shall revert unto the name of the Deceased.

(c) For the avoidance of doubt the grant of letters of administration intestate made to the Administrator on 20/07/1998 and issued on the same date is not revoked and shall remain in place.

(d) The summons for confirmation of grant filed in the lower court shall be heard afresh by the lower court in Thika CM Succession Cause No. 182 of 1998. For that purpose the original record of that court which is before this court shall be remitted back to the lower with a certified copy of

this judgment.

(e) Parties shall bear their own costs of these proceedings.

Those shall be the orders of the court.

DATED AND SIGNED AT MURANG'A THIS 13TH DAY OF OCTOBER 2016

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 14TH DAY OF OCTOBER 2016