



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 81 OF 2015
IN THE MATTER OF THE ESTATE OF GEORGE MITUGA OMARI (DECEASED)

RULING

1. The deceased herein died testate on 7th August 2014 having made a will on 12th May 2012. Representation to his estate was sought in a petition dated 14th January 2015 and filed in this cause on 20th January 2015 by the persons named in the will as executors.

2. Contemporaneously filed with the petition was a summons for immediate issue of a confirmed grant under section 71(4) of the Law of Succession Act, Cap 160, Laws of Kenya.

3. Section 71(4) of the Law of Succession Act provides as follows-

‘Notwithstanding the provisions of this section and sections 72 and 73, where an applicant files, at the same time as the petition, summons for the immediate issue of a confirmed grant of representation the court may, if it is satisfied that-

(a) There is no dependant, as defined by section 29, of the deceased other than the petitioner;

(b) No estate duty is payable in respect of the estate; and

(c) It is just and equitable in all circumstances of the case, immediately issue a confirmed grant of representation.’

4. The above provision allows a petitioner to move the court for confirmation of a grant representation contemporaneously with petitioning for a grant of representation, and a court faced with such a summons can order issuance of a confirmed grant so long as it is satisfied of the matters set out in 71(4) of the Law of Succession Act.

5. In the affidavit sworn in support of the petition and the summons, the petitioners have sought to justify grant of the confirmed grant. They have averred to be the only dependants of the deceased, that no excise duty is payable and that they are in dire straits. There is no explanation of what being ‘in dire straits’ means in the context of this matter, nor any explanation of the difficulties that the petitioners could be facing that would necessitate a summary procedure in respect of the instant estate.

6. The usual procedure in succession matters is to have the cause gazetted. The notification is not just intended for the dependants or survivors of the deceased, but also for the benefit of creditors and other persons who may be interested in the estate. Adopting a summary procedure would omit that process,

which would leave creditors and third parties without notice of the filing of the cause, and thereby deny them the opportunity to seek any remedies that they may have against the estate.

7. In my view, a person opting for the summary process set out in section 71(4) of the Law of Succession Act is required to demonstrate that it is just and equitable to take that route. Part of that should include demonstrating that the estate is not indebted to anyone, or, in the alternative, stating how any creditors would be settled in the event of the estate being distributed in a summary manner.

8. I am not satisfied that this is a just and equitable case in the circumstances of the estate for the court to issue a confirmed grant of representation under section 71(4) of the Law of Succession Act. I shall as a consequence order dismissal of the summons dated 14th January 2015 and direct that the cause herein be gazetted in the usual manner upon payment of the requisite fees.

9. I note that the estate comprises of only one asset, a piece of land known as S. Mugirango/Bosinange/1600, which is situated in either Kisii County or Nyamira County, which falls within the jurisdiction of the High Court of Kenya at Kisii. I shall therefore order that the matter be transferred to the High Court of Kenya at Kisii for disposal.

10. It is so directed.

DATED, SIGNED and DELIVERED at NAIROBI this 25TH DAY OF NOVEMBER, 2016.

W. MUSYOKA

JUDGE