



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 413 OF 2005

IN THE MATTER OF THE ESTATES OF MILKAH WANJIRU

CHEGE AND PETER KARANJA CHEGE (BOTH DECEASED)

AND

IN THE MATTER OF KIAMBU CMC SUCCESSIONS CAUSES NOS. 150 AND 151 OF 2003

RULING

1. The application for determination is the summons for confirmation of grant dated 5th November 2014. It is brought at the instance of Francis Kamenwa Chege, who is described as one of the beneficiaries of the estate. His affidavit was sworn on an unknown date in 2014. There is an affidavit of protest on record sworn on 9th December 2014 by Stephen Mwirikia Karanja and filed herein on 15th December 2014. The protestor is the administrator of the estate.

2. An oral hearing was conducted on 9th February 2016 and 25th March 2016 to dispose of the application. Both the applicant and the protestor testified.

3. The protestor was appointed administrator of the estate on 3rd December 2013, on an application dated 8th November 2013, which was allowed on 3rd December 2013 by consent. There is on record a certificate granting representation to the protestor, dated 3rd December 2013.

4. I am called upon to determine a confirmation application. Such applications are provided for under section 71 of the Law of Succession Act, Cap 160, Laws of Kenya, and Rule 40 of the Probate and Administration Rules.

5. Section 71(1) states that –

‘After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.’

6. Rule 40(1) on the other hand says that –

‘Where the holder of a grant which has not been confirmed seeks confirmation of the grant he shall apply for such confirmation by summons in Form 108 in the cause in which the grant was issued ...’

7. It is clear from these provisions that an application for confirmation of grant must be at the instance of the grant holder. The holder of the grant refers to the person named in it as administrator of the estate or personal representative of the deceased.

8. It is to the administrator that the law confers the authority, under section 83 of the Law of Succession Act, to pay debts and settle liabilities and thereafter distribute the net estate. That duty stems from the provision in section 79 of the Law of Succession Act, which states that the grant vests the property of the estate in the administrator. Consequently, as the property vests in the administrator, he exercises such power over it as the actual owner thereof would, including that to dispose of it whether by sale or gift.

9. The applicant herein is not the holder of the grant in respect of the estate herein. He is therefore not the administrator of the estate. The property of the deceased does not vest in him; therefore he has no power to dispose of it, or to make recommendations to the court on its disposal. He cannot exercise the powers granted by section 82 of the Act, nor discharge the duties imposed by section 83 thereof.

10. The provisions in section 71(1) of the Act and Rule 40(1) of the Rules are mandatory, only the administrator as holder of the grant of representation can mount an application for the confirmation of his grant. Any other person can only make counter proposals through an affidavit of protest. The application dated 5th November 2014 is no doubt incompetent for the reasons given above. The proceedings conducted on 9th February 2016 and 25th March 2016, on the basis of the said application, are a nullity. I shall accordingly strike out the application dated 5th November 2014, with costs to the administrator.

11. The record indicates that the estate comprises of assets situated within Muguga, Kanyariri of Kiambu County. The matter shall accordingly be transferred to the High Court of Kenya at Kiambu for disposal.

12. It is so ordered.

DATED and SIGNED at NAIROBI this 16TH DAY OF DECEMBER, 2016.

W. MUSYOKA

JUDGE

DELIVERED and SIGNED this 20TH DAY OF DECEMBER, 2016.

R. OUGO

JUDGE