

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 356 OF 1988

IN THE MATTER OF THE ESTATE OF NDOTONO WAIGANJO-(DECEASED)

RULING

1. The application dated 4th August 2014 seeks orders with respect to waiver of the Kenya Gazette notification.
2. The grounds upon which the application is premised are set out on the face of the application and in the affidavit of the administrator, Paul Gikurumi Ndotono, sworn on 4th August 2014.
3. The background is that the matter was initiated by way of petition. It was directed thereafter that citations do issue upon certain individuals. The persons cited appeared. After hearing the parties the court appointed the eldest son of the deceased as administrator. This was done without the matter going for gazette, whereupon the grant was issued to him.
4. The grant has since been confirmed, but the administrators are having difficulties getting the confirmation orders enforced because the relevant lands authorities are demanding a copy of the Kenya Gazette notification.
5. The order to appoint an administrator without going through the process of gazette was made on 29th July 1998. The court has inherent jurisdiction to proceed in that manner after hearing all the parties and in circumstances where the parties are at consensus. I do not think the said order was made in error and therefore I need not review it.
6. I am cognizant of the fact that this is an old matter. Equally, the parties appear to be in consensus on distribution and there is no contention. It would be imprudent to set them back by ordering gazette, as that would require that the process of applying for the grant start in earnest.
7. Rule 73 of the Probate and Administration Rules saves the inherent power of this court to make such orders as may be necessary for the ends of justice. This is one case where the court ought to exercise its inherent power to do justice.
8. I am inclined to and I do hereby allow the application in terms of prayer 2 thereof. The Land Registrar responsible for Kiambu County is hereby directed to give effect to the certificate of confirmation of grant dated 31st July 2013 without requiring production of the Kenya Gazette notification in relation to this matter. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 30th DAY OF January 2015.

W. MUSYOKA

JUDGE