

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 524 OF 1998

IN THE MATTER OF THE ESTATE OF ZUBERI MULUSA- (DECEASED)

RULING/DIRECTIONS

1. The application dated 8th May 2014 seeks substitution of dead administrators. It also seeks restraining orders against a co-operative society.
2. The applicants - Abraham Anyira Zuberi, Amina Kageha Mulusa and Rose Naima Zuberi – seek to be appointed administrators of the estate and that the grant made on 23rd August 1988 to Hamisi Zuberi and Ramadhani Zuberi, who have since dead, be revoked.
3. Attached to the application are documents which evidence that the said previous administrators are since dead. There is also a consent document executed by all the survivors of the deceased supporting the appointment of the applicants as administrators. The consent document is dated 6th June 2014.
4. I note that the restraining orders are sought against a party who is not a survivor or heir of the deceased. The cooperative society is a third party. Orders are not obtainable in a succession cause against third party. A person wishing to obtain such orders has to commence a separate civil suit against the third in proceedings commenced under the Civil Procedure Act or other relevant law.
5. Furthermore, the applicants are yet to be appointed administrators of the estate of the deceased. They therefore do not have capacity to obtain restraining orders against third parties. They can only be clothed with such authority upon being appointed administrators of the estate of the deceased, by dint of Section 79 of the Law of Succession Act.
6. By virtue of Section 79 of the Act, the assets which make up the estate of a deceased person vest in his personal representative. This has the effect of the personal representative stepping into the shoes of the deceased and exercising such powers and enjoying such rights as the deceased himself could have were he alive. The personal representative has power to sue and be sued, and to enter into contracts with respect to the property.
7. The final orders that I shall make in respect of the application dated 8th May 2014 are as follows:-
 - (a) That the grant made herein on 23rd August 1988 to Hamisi Zuberi and Ramadhani Zuberi is hereby revoked for having become useless and inoperative following their demise;
 - (b) That I appoint Abraham Anyira Zuberi, Amina Kageha Mulusa and Rose Naima Zuberi administrators of the estate of the deceased, and a grant of letters of administration intestate shall issue to them accordingly;
 - (c) That the prayer for injunction is disallowed and I do hereby advise that the administrators hereby appointed to seek orders against Mutua Farmers Corporative Society Ltd in a separate suit; and
 - (d) That costs of this application shall be costs in the cause.

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

W. MUSYOKA

JUDGE