

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 2732 OF 2008

IN THE MATTER OF THE ESTATE OF EPHANTUS MUNYUTU WAIGI- DECEASED

RULING

1. The summons dated 7th October 2013 asks me to review my orders of 27th June 2013 by declaring that the last valid will of the deceased is the one dated 12th January 2000 and that all the subsequent wills and testamentary instruments are invalid for want of capacity on the part of the testator.
2. The grounds upon which the application is premised are set out on the face of the application and in the affidavit sworn on 7th October 2013 by the executor, Solomon Njuguna Munyutu. He avers that the deceased had full testamentary capacity when he executed the will dated 12th January 2000. He however did not have testamentary capacity to execute the testamentary documents made on 24th November 2004 and 12th July 2007. Consequently, the only valid testamentary document is that executed on 12th January 2000, and his estate ought to be distributed in accordance with the said document. He avers that the grant on record was erroneously confirmed on the strength of the codicil made on 12th July 2007.
3. There are several other affidavits filed in support of the application by the persons who were party to the events surrounding the making of the testamentary documents of 2000, 2004 and 2007. They all attest to the fact the deceased had full control of his faculties in 2000, but that his mental capacity had deteriorated by 2003, and that he was not of the requisite capacity in 2004 and 2007 to make testamentary dispositions.
4. Attached to the affidavit of the executor is a letter from the deceased's person's personal doctor, one Samuel Nduhiu Gathua. In the letter dated 18th September 2013 he states that the deceased started to have problems with his memory as from November 2002.
5. The application dated 7th October 2013 is not opposed. There is no evidence to counter that presented by the executor in support of the application. Consequently, I do hereby grant the application dated 7th October 2013, in terms of prayers 1,2 and 3. Costs shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 23rd DAY OF January 2015.

W. MUSYOKA

JUDGE