

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 375 OF 2009

IN THE MATTER OF THE ESTATE OF HIRAM MURURU CHEGE-(DECEASED)

RULING

1. The application that I am tasked with determining is dated 6th November 2013. It seeks confirmation of the grant made on 10th April 2013.
2. It is purported to be premised on the affidavit of the three administrators, Lucy Wanjiku Chege, Kevin Karagu Chege and Tabitha Wakiya Kabuthia. The document purported to be the supporting affidavit on record is dated 6th November 2013 and executed by only two of the administrators, Lucy Wanjiku Chege and Kevin Karagu Chege. Significantly, it is not commissioned, and therefore it is not a statement on oath.
3. An application premised on Section 71 of the Law of Succession Act, should comply with Rule 40(1) of the Probate and Administrators Rules. It must be supported by an affidavit in Form 8 or 9 and should contain the details set out in that rule.
4. The application dated 6th November 2013 does not comply with rule 40(1) of the Probate and Administration Rules to the extent that it is not supported by the affidavit envisaged in the rule. The document purporting to support it on the face of it is in Form 8 or 9 but it is not commissioned, and therefore it is not an affidavit.
5. The defect is not fatal. The application is still valid, only that it cannot be determined without the information that should be provided by the supporting affidavit. The defect can be cured by the regularization of the document.
6. The determination of the application dated 6th November 2013 is hereby postponed. The applicant shall regularise the application by having the supporting affidavit on record commissioned. This shall be done within fourteen (14) days of this ruling. The matter shall thereafter be mentioned on a date to be given at the registry on priority for further directions.

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

W. MUSYOKA

JUDGE