



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

SUCCESSION CAUSE NO. 186 OF 2008.

PETER RUGU NJOROGE:::DECEASED.

AND

AMOS GITHAE RUGU & ANOTHER ::::::::::::::::::::::::::::::::::: APPLICANTS.

RULING

1. The grant of letters of Administration Intestate was firstly issued on the 18th March, 2009 in the name of Amon Githae Rugu and Benson Gikonyo Rugu.

An application was later made on 4th June, 2013, by Mary Njoki, Keziah Wairimu and Grace Wanjiru to have the grant revoked and/or annulled.

This court heard the application and without revoking the grant ordered that the same be amended to include the name of Mary Njoki and Keziah Wairimu as co-administrators. This was after the court had revoked the certificate of confirmation of grant dated 28th July, 2011, issued to the said Amon Githae Rugu and Benson Gikonyo Rugu.

2. In its ruling of the 12th March, 2014, the court directed that a fresh distribution of the estate be undertaken in a just and equitable manner to include each and every beneficiary and in keeping with the provisions of section 40 of the Law of Succession Act which provides that:-

(1) “Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.”

(2) “The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38”.

3. The parties were expected to apply the formula provided by the aforementioned provisions of the law to justly and equitably undertake a fresh distribution of the estate upon revocation of the earlier distribution in terms of the revoked certificate of confirmation of grant. The task fell on the four administrations but instead of acting as a team with a sense of purpose have divided themselves into two groups and decided to present their respective mode of distribution as demonstrated in the summons for confirmation of grant dated 6th August, 2014, taken out by Keziah Wairimu and the affidavit of protest to confirmation dated 22nd September, 2014, deponed by Amon Githae Rugu.
4. The protest is a direct indication that the proposed mode of distribution filed by the group led by Keziah Wairimu is not acceptable to the group led by Amon Githae Rugu whose preference is that

the estate be distributed in accordance with the Will of the deceased allegedly communicated by the deceased in a family meeting held on 18th October, 2000 (see, annexures marked “AGR 1 a-c” in the affidavit of protest).

The annexures aforementioned are in essence minutes of the meeting held on 18th October, 2000 rather than a formal Will of the deceased.

If anything, the annexures demonstrate that the deceased may have made an oral Will on how his estate would be shared between his two wives (i.e. Gladwel Mwihaki and Esther Wanjeri) and their children.

5. However, the Will whether formal or oral was never referred to in the petition by Amos Githae Rugu and Benson Gikonyo Rugu, for Letters of Administration Intestate. It cannot therefore be brought into play in the distribution of the estate at this juncture. In any event, the Will is doubted and challenged by a section of the beneficiaries and if indeed it was accepted by all the beneficiaries prior to the petition for the grant, then it ought to have been presented together with the petition. The petitioners' failure to present the alleged will meant that the deceased died without having made a Will and that this was a purely intestate succession in a polygamous situation.
6. If it really existed, the alleged Will ought to have been presented by way of a petition for grant of letters of Administration with Will annexed in which case the grant would be conclusive proof as to the terms of the Will and that the will had been duly executed. Such grant would confer authority on an administrator and vest the deceased's property in him. Be that as it may, herein the presupposition is that the deceased died without making a Will and hence, the petition by Amos Githae Rugu and Benson Gikonyo Rugu for grant of letters of Administration Intestate.

Amos Githae Rugu, cannot now be heard to say that there was a Will and therefore the estate of the deceased should be distributed according to the Will. His objection to the application by Keziah Wairimu for confirmation of the grant is without merit and is hereby overruled.

7. However, Keziah's application cannot be granted unless and until all the beneficiaries arrive at a meeting of minds with regard to distribution based on the formula provided by Section 40 of the Succession Act or on any other lawful formula which will ensure a just and equitable distribution of the estate among all the beneficiaries and/or dependants of the deceased.

Let the parties be informed that the speed at which this matter will be concluded to their satisfaction will depend on that respective good will in finding a solution to their current disagreements. It is this court's wish that the parties find common ground in the distribution of the estate without any interference from the court unless as a last resort in which case each party would be at liberty to apply.

Otherwise, the protest by Amos Githae Rugu fails and the application for confirmation of grant by Keziah Wairimu is held in abeyance pending agreement of the parties on distribution.

[Read and signed this 17th day of February, 2015.]

J.R. KARANJA.

JUDGE.