

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO 360 OF 2014

IN THE MATTER OF THE ESTATE OF DAVID KAMAU KANINI, DECEASED

DAVID CHARLES NJOGA

EVANS WILFRED NJENGA.....PETIONERS

RULING

- 1.** The Petitioners herein, **David Charles Njoga** and **Evans Wilfred Njenga**, sought by an undated petition filed on 27/05/2014 **probate** of the Written Will of the Deceased **David Kamau Kanini** who died on 25/12/2013. The Will, which was annexed to the petition, is dated 21/07/2013.
- 2.** The petition was gazetted vide **Gazette Notice No 5553 of 08/08/2014**. Although there is not in the court record the usual order for issuance of the necessary grant made by a Judge, nevertheless a **grant of letters of administration intestate** was issued on 09/10/2014 to the 1st Petitioner alone and signed by a Judge. Issuance of the grant of letters of administration intestate was of course wrong; what should have been issued was a **grant of probate** of the Deceased's Written Will. That is what was sought in the petition. The grant should also have been issued to both Petitioners; I cannot find in the record of the court the reason for issuance of the grant to the 1st Petitioner alone.
- 3.** The Petitioners have now come back to court by **summons dated 09/02/2015** seeking annulment of the said grant of letters of administration intestate and issuance of a grant of probate of the Deceased's Written Will. The summons is supported by an affidavit sworn by one of the 1st Petitioner, who is also one of the executors of the Deceased's Will.
- 4.** I have no difficulty at all allowing this application, which application was necessitated by the court's own mistake. The grant of letters of administration intestate issued in this cause on 9th October 2014 is hereby annulled. In its place a **grant of probate** of the Deceased's Written Will dated 21st February 2013 shall be issued jointly to the two Petitioners. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 21ST DAY OF APRIL 2015

H P G WAWERU

JUDGE

DELIVERED THIS 24TH DAY OF APRIL 2015