



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 2175 OF 2003

IN THE MATTER OF THE ESTATE OF GIKONYO MUTHIGE (DECEASED)

RULING

1. The deceased herein died sometime in 1964. He had married four times and was survived by children from all the four houses.
2. Representation to his estate was sought through a petition lodged at the registry and in this cause on 1st August 2008 by one of the sons of the deceased, Gikonyo Muthige. He was said to have been survived by sixteen (16) children and to have died possessed of a property known as Kabete/Karura/99. A grant of letters of administration intestate was made to him on 13th February 2009.
3. On 5th November 2009, an application for revocation of grant was lodged at the registry in the cause by one David Ngugi Gikonyo. He alleged that there had been an *inter vivos* distribution of the property by the deceased and that there had been succession proceedings before the District Magistrate, Kikuyu, in **DMCSC No. 49 of 1980**. He was of the view that the matter was complex and required involvement of more administrators.
4. It would appear that the application dated 4th November 2009 was resolved by consent. The grant was confirmed by orders made on 21st July 2010, and the estate was distributed amongst ten (10) of the sixteen (16) children of the deceased.
5. The application dated 4th November 2010 seeks revocation of the certificate of confirmation of grant dated 21st July 2010. The applicants argue that the same was obtained in a process that was not inclusive. They would like another administrator added and the estate to be distributed in a manner that they said they had proposed, but which was not exhibited to the application.
6. In his reply the administrator accuses the applicants of having been uncooperative when the process began in 1982 at the Kikuyu courts. He states that he was forced to initiate the proceedings at the High Court through citations issued to them. He further states that the applicants had consented to the distribution ordered on 21st July 2010.
7. There are on record several other affidavits thereafter.
8. It was directed that the application be disposed of by way of *viva voce* evidence. A number of

witness statements were filed to that end.

9. I note that the applicants are not in principle seeking revocation of the grant, but rather the revocation of the certificate of confirmation. They are unhappy with the distribution but not the grant as such.
10. Where issues arise as to the distribution, the way forward should not be to revoke the grant, but rather to review the distribution ordered by the court to accommodate the names of those that might have been excluded at the time.
11. The deceased was a polygamist, with four (4) wives and many children. I have noted that out of the four (4) houses, only one is represented in the administration of the estate. In my view that goes to the root of the problem in the administration of the estate.
12. I note too that at confirmation not all the sixteen (16) children of the deceased attended court, not all signed documents consenting to the proposed mode of distribution, and not all sixteen (16) got a share in the estate of the deceased. It is not explained why some of the children or their descendants were left out.
13. Justice of the situation would require that all four (4) sides of the family of the deceased be included in the administration of the estate, and that all the children or their families be involved in the distribution process.
14. The orders that I will make in the circumstances are:-
 - a. **That I will not revoke the grant of 13th February 2009, but I shall direct that three additional administrators be appointed from each of the other three (3) houses of the deceased;**
 - b. **That the confirmation orders of 21st July 2010 are hereby set aside; and**
 - c. **That the matter shall be mentioned after thirty (30) days for the appointment of the three (3) additional administrators.**

DATED, SIGNED and DELIVERED at NAIROBI this 25TH DAY OF SEPTEMBER, 2015.

W. MUSYOKA

JUDGE