

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2767 OF 2002

IN THE MATTER OF THE ESTATE OF ESTHER WANGUI MACHARIA (DECEASED)

RULING

1. On 14th March 2007, Alfred Mike Mureithi and Margaret Mukami Macharia, the only children of the deceased were appointed the administrators of her estate.
2. On 28th March 2007 it was directed that the administrators appointed in the grant of 14th March 2007 ought to move the court as quickly as possible to have the new grant confirmed.
3. In compliance with the said directives, two applications were lodged at the registry for confirmation of the grant. The first, dated 30th April 2007, was at the instance of Margaret Mukami Macharia, through her advocates. The second, dated 1st November 2008, was at the instance of the other administrator, Alfred Mike Mureithi, in person. It is the application dated 1st November 2008 that was eventually heard in the absence of Margaret Mukami Macharia and confirmed on 10th November 2009.
4. The orders made on 10th November 2009 prompted the application dated 14th January 2010 that I am tasked with determining. The applicant seeks the setting aside of the orders of 10th November 2009 and for leave to file an affidavit of protest. The applicant avers that she was never served personally with the application dated 1st November 2008, neither was it ever served on her advocates. She avers further that she did not know of the person who was allegedly served with the application and the hearing notices. She states that the said application was determined without her in-put.
5. There is a reply to the application, in an affidavit sworn on 27th January 2010. The reply does not address the germane issue in the application, whether the respondent had served the application or hearing notices on the applicant. He dwells largely on other issues which are peripheral.
6. It was directed on 23rd September 2014 that the said application be disposed of by way of affidavit evidence and written submissions. There are on record submissions filed by counsel for the applicant.
7. I have carefully scrutinised the record relating to the application dated 1st November 2008. I am satisfied that the said application dated 10th November 2008 was never served personally on the co-administrator, Margaret Mukami Macharia. I am also satisfied that Ms. Macharia's own application dated 30th April 2007 was never served on the applicant in the application dated 1st November 2008.
8. That being the case, I am convinced that the matter was not ripe for hearing for all the persons interested in the estate had not been served with the confirmation application. The orders made on 10th November 2009 ought not have been made.
9. Consequently, I do hereby make the following orders-
 - a. **That the orders made on 10th November 2008 confirming the grant made on 14th March 2007 are hereby vacated and all consequential orders are hereby set aside;**
 - b. **That the certificate of confirmation of grant issued pursuant to the said confirmation is hereby cancelled;**
 - c. **That the applicants in the applications dated 30th April 2007 and 1st November 2008 shall**

- serve their respective applications within fourteen (14) days;
- d. That the two applications shall be disposed of simultaneously, with the application dated 30th April 2007 being the main application and the one dated 1st November 2007 being the protest to the said application;
 - e. That directions on the disposal of the two applications to be given on a date to be fixed at the delivery of this ruling.

DATED, SIGNED and DELIVERED at NAIROBI this 18TH DAY OF DECEMBER, 2015.

W. MUSYOKA

JUDGE