

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 294 OF 2008

IN THE MATTER OF THE ESTATE OF KAHUHO THUKU alias KAHUHO KINORO
(DECEASED)

RULING

1. These proceedings relate to the estate of Kahuhu Thuku *alias* Kahuhu Kinoro, who died on 4th September 1971.
2. Representation was sought to his estate in **Kiambu SRMCSC No. 24 of 1987** by his son, Stephen Ngigi Kamau, and brother, Murathe Kinoro, in a petition filed in that cause on 4th February 1987. He was expressed to have been survived by the son and the brother, and to have died possessed of half share of Ndumberi/Ting'ang'a/832 and the whole of Ndumberi/Ting'ang'a/T.296.
3. A grant was duly made to the petitioners on 1st October 1987. The said grant was confirmed on 5th February 1991 with the assets being shared between the named survivors of the deceased in the following manner-
 - a. *Ndumberi/Ting'ang'a/T.296 to Stephen Ngigi Kamau absolutely,*
 - b. *Ndumberi/Ting'ang'a/832 – 1.16 acres to Stephen Ngigi Kamau and 1.00 acres to Murathe Kinoro Mwaura.*

A certificate of confirmation of grant dated 6th February 1991 was duly issued.

4. On 12th February 2008 a summons for revocation of the said grant, dated 15th February 2008, was lodged at the High Court registry in this cause by Monica Muthoni Kahuhu. She alleged that the grant had been obtained fraudulently as her existence had been suppressed and she had been disinherited.
5. The said application was compromised on 6th May 2008, where by consent the certificate of confirmation of grant dated 6th February 1991 and amended on 24th July 2005 was cancelled. The administrators were to file a fresh summons for confirmation of grant.
6. In pursuance of the said consent orders, two applications for confirmation of grant were lodged at the registry. There is one dated 19th June 2008 by Stephen Ngige Kamau, filed herein on 23rd June 2008. The other is by Monica Muthoni Kahuhu and is dated 23rd June 2008 and was filed in court on even date. It is these two applications that I am tasked with determining.
7. Technically, these two applications are incapable of determination. In the first place, the application by Monica Muthoni Kahuhu is not competent. By dint of the wording of Section 71 of the Law of Succession Act, Cap 160, Laws of Kenya, an application for confirmation of a grant of representation can only be sought by the holder of the grant. Monica Muthoni Kahuhu does not hold a grant of representation, whether made in this cause or in **Kiambu SRMCSC No. 24 of 1987**. She has no power therefore to apply for confirmation of any grant, and her application is therefore incompetent. The court has no jurisdiction in the circumstances to make any orders on it.

8. Secondly, the grant on record was made in **Kiambu SRMCSC No. 24 of 1987**. No grant has been made in this cause, that is to say HCSC No. 294 of 2008. This court is seized of **HCSC No. 294 of 2008**, and not **Kiambu SRMCSC No. 24 of 1987**. It can only confirm the grant made in this cause, but not that made in **Kiambu SRMCSC No. 24 of 1987** which it is not seized of. Therefore, to that extent, the application by Stephen Ngigi Kamau is also incompetent.
9. The proper cause of action in the matter should have been that after the confirmation orders were vacated by consent on 6th May 2008, the Kiambu court file ought to have been returned to the Kiambu Law Courts for the confirmation of the grant made by that court, given that this court had not made any grant that it could confirm. The alternative would have been to revoke the grant made by the lower court, and make a fresh one in this cause which would then be available for confirmation by this court. As it is, there is no grant upon which this court can make orders on the application before it.
10. Consequent to the above, I have to strike out the incompetent applications for confirmation of grant dated 19th June 2008 and 23rd June 2008. There shall be no orders as to costs.
11. To move the matter forward, I hereby order that the court file in **Kiambu SRMCSC No. 24 of 1987** be returned to the said court for confirmation of the grant made by that court in terms of the orders made herein on 6th May 2008 and 17th June 2008 by Rawal J.
12. It is so ordered.

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

W. MUSYOKA

JUDGE