

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

SUCCESSION CAUSE NO: 1514 OF 2006

IN THE MATTER OF THE JOSEPH KARARAHE GATUGUTA-(DECEASED)

JUDGMENT

1. The deceased died on 29th December 2004 at Kikuyu Township. A petition for grant of probate of his written will made on 13th April 1998 was filed on 6th June 2006 by Milka Wanjiru Gatuguta, his widow and executrix of his will.
2. Notice was published in the Kenya Gazette of 18th August 2006 of the filing of the petition.
3. On 15th September 2006 a notice of objector to the making of the grant dated 15th September 2006 was lodged in the cause on behalf of a creditor called Kangondi Farmers Corperative Society Ltd. A notice under Rule 17(5) of the Probate and Administration Rules was given to the advocates for the proposed objector. The said notice was dated 12th April 2007.
4. The objector filed an answer to the petition and a petition by way of cross-application on 9th July 2007.
5. The deceased died testate. He left a will, whose validity is not being challenged by the objector. In terms of priority to administration of the estate concerned, the executor of the will of the deceased is entitled to administer the estate.
6. The objector is a creditor. The fact of being creditor does not give the objector preference over the executor of the will of the deceased. The creditor is ideally putting the cart before the horse. It should file its claim with the executor once grant is made so that the executor can settle the claim. Alternatively, the creditor should seek to enforce the decree against its estate (through the execution of the decree it holds) in the cause in which the decree was made.
7. The instant objection proceedings are clearly misconceived and without merit. I dismiss the objection with costs to the estate. Grant of probate of the written will of Joseph Kararahe Gatuguta shall issue to Milka Wanjiru Gatuguta.

DATED, SIGNED and DELIVERED at NAIROBI this 31st DAY OF January, 2014.

W. MUSYOKA

JUDGE