



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO: 951 OF 2004

IN THE ESTATE OF OLIVE MARIAN SWIFT – (DECEASED)

RULING

1. Olive Marian Swift died on 16th May 2003. She left behind a will made on 10th February 1992, appointing Malcolm Rex Higgins, Anthony Tudor Carlton Armitage and John Robin Randall Swift as executors.
2. Representation to the estate was sought on 7th April 2004 by Malcolm Rex Higgins, and a grant of probate of the said written will was made to him on 9th June 2004.
3. The said executor/personal representative sought confirmation of the grant through an application dated 21st December 2004. The said application was heard on 14th March 2005, and orders confirming the grant were made. A certificate of confirmation of grant was issued of the same date.
4. Malcolm Rex Higgins died on 16th September 2009.
5. The death of the deceased's personal representative prompted the summons dated 21st January 2010 seeking substitution of the dead personal representative with the applicant, Sarah Anne Higgins, as the attorney of the other executors of the will, that is to say Anthony Tudor Carlton Armitage and John Robin Randall Swift.
6. The said application was placed before Dulu J. on 22ⁿ January 2010 who allowed the substitution. An amended grant of probate of written will and an amended certificate of confirmation of grant were subsequently made on 22nd January 2010 in the name of Sarah Anne Higgins.
7. The said court papers were returned to court vide a letter dated 10th December 2012 by counsel for the estate on the grounds that they were not properly drafted.
8. Kimaru J. directed that the matter be mentioned before him for directions. When the matter was listed for mention on 6th May 2013, Kimaru J advised that the beneficiaries, who are also named as executors in the will, and who reside out of the country should renounce executorship to facilitate administration of the estate by Sarah Anne Higgins.
9. Following this advice the surviving executors, Anthony Tudor Carlton Armitage and John Robin Randall Swift executed separate deeds of renunciation of executorship on 4th June 2013 and 30th May 2013, respectively. The said deeds of renunciation were subsequently filed in court on 20th June 2013.
10. The matter was mentioned before me on 16th July 2013 for directions. Miss. Shah asked me to

determine the application dated 21st January 2010 which sought substitution of the dead personal representative with Sarah Anne Higgins.

11. Having carefully gone through the record it is my view that the application dated 21st January 2010 is not pending. It was determined and disposed of by Dulu J on 22nd January 2010, when His Lordship the prayer for substitution. Even if the application were still pending it would not be proper to grant the orders sought in the application in the terms proposed. Ideally, Sarah Anne Higgins ought to have make a fresh application for her appointment as administrator of the estate of the deceased.

12. To move this matter forward, I hereby make the following orders:-

(a) that the grant of probate of written will made on 9th June 2004 to Malcolm Rex Higgins is hereby revoked for having become useless and inoperative following the death of the holder thereof;

(b) that Sarah Anne Higgins is hereby appointed the administrator of the estate of Olive Marian Swift to complete administration of the said estate;

(c) that a grant of letters of administration with the will annexed shall issue to the said Sarah Anne Higgins;

(d) that the said Sarah Anne Higgins shall thereafter proceed distribute the estate of the deceased on the strength of the certificate of confirmation of grant dated 14th March 2005.

(e) that costs shall be in the cause.

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

W. MUSYOKA

JUDGE