

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 992 OF 2002

IN THE MATTER OF THE ESTATE OF VIRGINIA WAITHERERO -(DECEASED)

RULING

1. The application dated 31st May 2013 is for confirmation of the grant of probate made to Paul Karenju Wambugu on 21st June 2002.
2. Paul Karenju Wambugu is the executor named in the will of the deceased made on 12th February 1999. The said executor is said to have died. No certificate of death has been attached, but there is attached as proof of his death a grant of letters of administration intestate in respect of his estate made on 27th August 2003 to Nancy Wairimu and Bernard Gathira Karenju in Nairobi **High Court Succession Cause No. 1756 of 2003**. It is these administrators of the estate of dead executor who have sought confirmation of grant of the estate of the deceased in this cause.
3. Under *Section 71(1)* of the Law of Succession Act and Rule 40(1) of the Probate and Administration Rules an application for grant of representation should be made by the holder of the grant. The grant in this cause was made to Paul Karenju Wambugu and therefore he is the holder thereof and the right person to move the court for confirmation of grant. Only the holder of the grant can move the court for the confirmation of his own grant.
4. The holder of the grant is now dead, and therefore he cannot apply for confirmation of his grant. Upon his death the grant made to him became useless and inoperative, and therefore incapable of being confirmed. There is therefore nothing to confirm.
5. As mentioned above, the applicants herein do not hold the grant to the estate of the deceased herein. They have no capacity therefore under *Section 71(1)* of the Act and Rule 40(1) of the Rules to apply for confirmation of a grant they do not hold. If they intended to have said grant confirmed, they should have sought substitution of the dead person representative.
6. The application dated 31st May 2013 is misconceived, incompetent and an abuse of the process. I hereby strike it out with costs.

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

W. MUSYOKA

JUDGE

W. MUSYOKA

JUDGE