

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 2568 OF 1998

IN THE ESTATE OF WAITHAKA GITIMU –DECEASED

RULING

1. The applicant is the executrix of the will of the deceased and the deceased's personal representative. Representation to her was made on 25th March 1999 when probate of the deceased's written will was granted to her.
2. The grant was confirmed on 7th November 2000. The estate of the deceased was to devolve as per the will of the deceased. A certificate of confirmation of grant to that effect was issued dated 7th November 2000.
3. The wording of the certificate of confirmation is general, the estate is to devolve "*as per the will*" of the deceased. Yet the will itself is both general and specific. Clause 1 of the will appoints Marion Nyaguthii Waithaka, the applicant herein, the trustee of the deceased and executrix of the said will. Clause 2 devises and bequeaths to the said trustee and executrix the deceased's entire estate. Clause 5 and 6 are specific for they devise specific assets to the individuals named in those two clauses. The will as drafted captures the property disclosed in the will as well as property that is not disclosed.
4. By her application dated 27th September 2012, the executrix states that she is having challenges disposing of the assets that are not mentioned in the will and the certificate of confirmation of grant. She would like the said assets (being shares held by the deceased at the Kenya Commercial Bank, Housing France Company of Kenya and National Bank of Kenya) included in the certificate of confirmation of grant, hence the need for amendment of the said certificate.
5. The certificate of confirmation dated 7th November 2000 cannot possibly be amended in its current form, where the estate is to devolve "*as per the will*". The executrix ought to work out a schedule of distribution listing all the assets and indicating how they are to devolve. The proposed distribution must of course conform with the terms of the will.
6. In the circumstances, I the proper course of action would be to set aside the confirmation orders of 7th November 2000 and cancel the certificate of confirmation of grant dated 7th November 2000, which I hereby do. The executrix shall thereafter file a fresh application for confirmation of grant in the terms that I have set out in paragraph 5 of this ruling.
7. I note that the summons for revocation of grant dated 22nd April 2002 is still pending. I note too the order recorded by Kimaru J on 14th January 2013. I will therefore order that the revocation proceedings shall be determined first before any fresh summons for confirmation of grant is filed.
8. To move the matter forwarded, I hereby direct the applicant in the summons for revocation dated 22nd April 2002, Sarafina Wanjiru Waithaka to have the said application fixed for hearing within thirty (30) days of date of this ruling. The Deputy Registrar shall give priority to the said application. In default of fixing the said summons dated 22nd April 2002 for hearing within 30 days, the said application shall stand dismissed.

9. This matter shall be mentioned after 30 days for compliance.

DATED, SIGNED and DELIVERED at NAIROBI this 21ST DAY OF MARCH, 2014.

W. M. MUSYOKA

JUDGE