

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

MISCELLANEOUS SUCCESSION NO. 9 OF 2014

IN THE MATTER OF THE ESTATE OF KIUMBI MUKUNARUKU (DECEASED)

AND-

MARY NGIMA KARABA.....APPLICANT

RULING

The chamber summons application dated 27th March 2014 has been made under **Rule 49 and 73** of the **Probate and Administration Rules**. It seeks orders from this court allowing the applicant to file a succession cause for grant of letters of administration of the Estate of **Kiumbi Mukunaruku** without having to produce a death certificate.

In her supporting affidavit sworn on 7th March 2014 and in her oral submissions before the court, the applicant claims that the deceased died in 1968 when Kenya did not have a system for registering deaths and as such no death certificate was issued to confirm the death of her father in law **Kiumbi Mukunaruku**. The letter authored by the chief of Kiine Location annexed to her supporting affidavit supports this claim.

I have observed the applicant as she addressed the court this morning and noted that she is an elderly lady of about 60-70 years and her credibility appears to be beyond question.

The law of **Succession Act** does not have any provision specifically requiring production of a death certificate when filing for grant of representation. However Rule **7(2)** of the **probate and Administration Rules** provides that:-

“There shall be exhibited in the affidavit a certificate or a photocopy of a certificate of the death of the deceased or such other written evidence of the death as may be available.”

As grant of letters of administration is always issued in respect of the Estate of a deceased person, it follows that before such grant is issued, death of the person in question must be proved.

However, under **Rule 7(2) of Rules**, it is clear that death can be proved either by way of a death certificate or any other written evidence of the death may be available. It therefore follows that where an applicant satisfied the court that a death certificate is not to prove the death of the person in respect of whose

Estate representation is sought, the court in its discretion can allow the use of any other written evidence of death to be used in an application for grant of letters of administration.

In this case, the only written evidence that is available to prove the death of **Kiumbi Mukunaruku** is a letter dated 25th March 2014 authored by the chief of the area he hailed from. I am satisfied that the said letter meets the requirements of **Rule 7(2)** of the **Probate and Administration Rules**.

The application is therefore allowed. The applicant is allowed to use letter from the chief of Kiine Location dated 25th March 2014 in support of her intended application for grant of representation to the Estate of the deceased herein. It is so ordered I make no order as to costs.

C.W. GITHUA

JUDGE

DATED, SIGNED AND DELIVERED AT KERUGOYA THIS 21st DAY OF MAY 2014 in the presence of:-

The Applicant

Mbogo Court clerk