

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT

NAIROBI

SUCCESSION CAUSE NO. 1779 OF 2009

IN THE ESTATE OF MAINA MURIMA alias KIBUNJA MURIMI – (DECEASED)

RULING

1. On 2nd March 2012, Mugo J. revoked a grant that had been made on 8th January 2007 by the Thika Chief Magistrate’s court. She directed the applicants to select a co-administrator from their respective houses to act jointly with them in applying for a fresh grant which was to be made to four (4) persons to avoid further disagreements.

2. The application dated 20th April 2012 was made in an effort to comply with the order of 2nd March 2012. It is based on the affidavit of Julius Murimi, Peter Macharia, Paul Karanja Hezekiah and Ann Ruguru Hezekiah. It asks that the four of them be appointed as administrators of the estate. They aver in their joint affidavit that they were selected to represent the two houses. They indicate that two family members did not agree with the rest of the family, that is to say Joel Mwaura Maina and Gilbert Kihara.

3. The two filed an affidavit of protest through Joel Mwaura Maina. Their argument is that the order of 2nd March 2012 was to the effect that the two widows be included as administrators and two other persons be selected by the family. The deponent protests that the widows and himself have been excluded. He argues that he and his co-protestor, Gilbert Kihara, are suited to be administrators and ought to be included as such.

4. When the matter came up for directions on 26th March 2014, Mr. Ngige for Mr. Ndumu Kimani for the applicants proposed that the application be disposed of by way of written submissions, while Mr. Anambo holding brief for Mr. Gachie for the respondents proposed that the respondent be given opportunity to give oral evidence.

5. I have carefully studied the application and the rival affidavits and the written submissions filed by the applicants. The application is a fairly straightforward one for appointment of administrators in accord with the order of 2nd March 2012.

6. The order of 2nd March 2012 states as follows:-

“Accordingly, the temporary grant issued to the respondent on 8th January 2007 is hereby revoked. The applicants shall select a co-administrator from their respective houses to act jointly with them in applying for a fresh grant which shall be made to 4 persons to avoid further disagreements.”

7. My understanding of that order is that the applicants in the application dated 14th August 2009 were to select a co-administrator each from their house and the four of them shall then apply for fresh grant. The effect of this is that the two applicants in the application of 14th August 2009 had been identified by the court as the future administrators. The two were mandated to select a person each from their houses.

8. The two applicants in the application of 14th August 2009 were Bernice Wambui Kibunja and Monica Wangari Kibunja, who were also the widows of the deceased. It is these two, and these two only, who had been mandated by the court to select a person each from their respective houses to join them as co-

administrators.

9. I agree with the respondents that the order of 2nd March 2012 has not been complied with. The two widows do not feature in the application dated 20th April 2012 and the persons seeking grant have not been selected by them.

10. As the application dated 20th April 2012 does not confirm with the order of 2nd March 2012 it is hereby dismissed with costs.

11. To move this matter forward I do hereby order that this matter be mentioned on 27th January 2015 for appointment of administrators. The two widows of the deceased must attend court on that day together with all their children.

DATED, SIGNED and DELIVERED at NAIROBI this 21st DAY OF November 2014.

W. MUSYOKA

JUDGE