

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Succession Cause 1498 of 1996

IN THE MATTER OF THE ESTATE OF MWANIKI GICHUMU (DECEASED)

RULING

The applicant, Patrick Kinyua Mwaniki in the application dated 21st November 2012 seeks the removal of a co-administrator who has died Nancy Wangu Mwaniki, and her replacement with David Maina Mwaniki. He would also like the distribution ordered on 24th February 1998 varied. Finally, he would like the certificate of confirmation of grant dated 24th February 1998 rectified to accord with these changes.

In his affidavit sworn on 15th November 2012, he avers that Nancy Wangu Mwaniki, was his mother, the widow of the Mwaniki Gichumu and his co-administrator. She died on 16th January 2007 and attached to his affidavit is a death certificate dated 2nd March 2007 which attests to this. He and Nancy Wangu Mwaniki were appointed administrators of the estate of Mwaniki Gichumu on 30th September 1996 and a grant of letters of administration intestate of even date was issued to them. The said grant was confirmed on 24th February 1998.

The grant of 30th September 1996 was made to two persons. The two were meant to act jointly in the administration of the estate. In such a scenario, the death of one of two administrators renders a grant inoperative and useless. It is inoperative and useless as the surviving administrator cannot possibly use the grant anywhere without the other administrator as that other would always be expected to execute documents relating to any transaction being undertaken by the estate. The grant is useless so long as it bears the name of a dead administrator. Under **Section 76** of the Law of Succession Act, such grant is liable to revocation for having become useless and inoperative.

The applicant has not moved the court under Section 76 of the Law of Succession Act. Instead, he is asking for the removal of the name of the dead administrator from the grant and the replacement of that name with that of another. That is not procedural. Since the grant has become useless it should be revoked. I hereby revoke it on my own motion in exercise of jurisdiction granted to me by **Section 76**. I note that all the surviving children of the deceased consent to the replacement of Nancy Wangui Mwaniki with David Maina Mwaniki. As the previous grant has been revoked, I will appoint Patrick Kinyua Mwaniki and David Maina Mwaniki administrators of the estate of Mwaniki Gichimu. A fresh grant of letters of administration intestate shall be issued to them.

The grant made on 30th September 1996 had been confirmed on 24th February 1998. The certificate of confirmation of grant dated 24th February 1998 shared the estate equally among all the five surviving sons of the deceased subject to the life interest of their mother and the widow of the deceased, Nancy Wangui Mwaniki. In this application Patrick Kinyua Mwaniki seeks the revision of the distribution of 24th February 1998 and proposes a different mode of distribution. I am unable to grant this plea. Firstly, because at the time this application was lodged in court on 21st November 2012, the grant of 30th September 1996 had become inoperative and useless following the death of Nancy Wangui Mwaniki, and Patrick Kinyua Mwaniki could not rely on it to propose distribution of the estate. Secondly, because the summons before me is not grounded on the provisions of the law which provide for confirmation of grant; that is to say **Section 71** of the Law of Succession Act and Rule 43 of the Probate and Administration Rules. Thirdly, a grant cannot be made and confirmed on the same day.

To facilitate the completion of administration of the estate of Mwaniki Gichumu, I hereby cancel the

certification of confirmation of grant dated 24th February 1998. The administrators shall file a fresh application for confirmation of the grant made to them.

It is ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 29th DAY OF April, 2013.

W.M. Musyoka
Judge