



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2549 OF 1999

IN THE MATTER OF THE ESTATE OF ZIPPORAH MWERU NDIBO (DECEASED)

RULING

Siphora Mweru Ndibo died on 4th November 1995. She died testate having made a will on 21st May 1993. She appointed George Njenga Gikuni executor of the said will, and devolved her estate upon her children, Maria Kibinya and Moses Nthenge. The named executor, George Njenga Gikuni, obtained representation to the said estate, and a grant of probate of written will was made to him on 5th January 2000.

The daughter of the deceased named Maria Kibinya moved the court on 11th March 2002 under **Section 26** of the Law of Succession Act asking for reasonable provision. The said application was never heard, but was spent on 13th May 2002 when it came up for hearing, and the applicant, Maria Kibinya, confirmed to court that she was not challenging the will, but was concerned that the executor was not moving fast enough to have the grant confirmed. The beneficiaries were directed to persuade the executor to apply for the confirmation of the grant so as to have the estate distributed.

The executor then moved the court appropriately thereafter for confirmation of the grant, vide an application dated 12th February 2003. The grant was confirmed on 20th May 2003. The estate was distributed as per the terms of the will made on 21st May 1995. Moses Nthenge was given Dagoretti/Uthiru/950, while Maria Kibinya got Dagoretti/Uthiru/1004.

The executor was to move the court again through an application dated 22nd November 2006, asking that the grant confirmed on 27th May 2003 be rectified. The case was that Dagoretti/Uthiru/950 had been subdivided into Dagoretti/Uthiru/1118, 1119, 1120 and 1121 and therefore the certificate dated 20th May 2003 could not be implemented. It transpired that Dagoretti/Uthiru/1118 had been transferred by the deceased to a third party called Peter Njenga. The executor sought that the certificate of confirmation grant dated 20th May 2003 be rectified to delete Dagoretti/Uthiru/950 and replace it with Dagoretti/Uthiru/1119, 1120 and 1121, and that the said parcels revert to Moses Nthenge. The application was granted on 26th May 2008 by Rawal J.

After that the beneficiary called Maria Kibinya filed an application dated 6th October 2008 seeking to be appointed as guardian of her brother Moses Nthenge on the grounds that the said Moses Nthenge had become a drunkard. She also sought to be allowed to collect rent in respect of Dagoretti/Uthiru/950. When the said application came up before Gacheche J, it was directed that the applicant ought to seek an order to compel the executor to execute the will.

The instant application, dated 3rd April 2012, is by the same Maria Kibinya. She seeks that the grant made on 27th May 2003 be revoked on two grounds - one, that the administrator, George Njenga Gikuni, is dead, and, two, that the other beneficiary, Moses Nthenge, is mismanaging the estate.

From my perusal of the court file, I have noted that no grant was made on 27th May 2003. What happened on that day was that a certificate was issued to evidence the confirmation of the grant on 20th May 2003. The grant on record was made on 5th January 2000. I would assume that this is the grant that is sought to be revoked.

The will of the deceased appointed George Njenga Gikuni the executor of the will. There are no supplementary clauses dealing with who should take over as executor in the event of the death of or renunciation of probate by George Njenga Gikuni. In such a case **Sections 63, 64, 65 and 66** of the Law of Succession Act apply. Clause 5(b) of the will of the deceased makes the two children of the deceased the residuary legatees. Such residuary legatees are the persons entitled to appointment as administrators in the event of the death of the executor or renunciation of probate by the executor.

Revocation of grants is provided for in **Section 76** of the Law of Succession Act. Under that provision, a grant will be revoked for, among other things, having become useless and inoperative. In this cause, the grant herein has become useless and inoperative following the death of the executor, George Njenga Gikuni. This is so as such a grant cannot be used at all. A grant is a certificate issued to a particular person or individual. It is personal. It can only be used or uttered by the person or individual named in it. In this cause it can only be used or uttered by George Njenga Gikuni. He cannot now possibly do so as he is dead. The said grant is therefore available for revocation, and I hereby do revoke it.

The application herein proposes that I should appoint the applicant administrator of the estate of the deceased. The law on appointment of administrators requires that where two or more persons are equally entitled to appointment as administrators and only one of them seeks appointment, those who are equally qualified but are not seeking appointment must consent to the one applying being so appointed. In this case, the applicant and Moses Nthenge have, by dint of **Sections 63 and 66** of the Law of Succession Act, equal right to be appointed administrators of the estate of the deceased. Since only the applicant has applied, the consent of Moses Nthenge is mandatory. There is no evidence that he has so consented.

I note that the applicant has made certain accusations against the said Moses Nthenge touching on mismanagement of the estate. These allegations have not been proved. He is alleged to have subdivided land and is said to be selling the same. No proof has been placed before me to justify those claims. The applicant also appears to be challenging the validity of the will. I find this surprising. The record shows that she personally addressed the court on 13th May 2002 and indicated that she was not challenging the will of the deceased. She has in the past filed various applications, detailed in the preceding paragraphs of this ruling, but she has never challenged the validity of the will at all in any of those applications. Her allegation that the will is invalid is, to my mind, coming rather too late in the day, and I am therefore entitled to take the said allegation with a pinch of salt.

The final orders that I will make in this matter are: -

1. That the grant herein made on 5th January 2000 is hereby revoked for having become useless and inoperative following the death of the named executor, George Njenga Gikuni.
2. That Moses Nthenge and Maria Kibinya are hereby appointed administrators of the estate of Zipporah Mweru Ndibo.
3. That a grant of letters of administration with the will annexed shall issue to them for the purpose of completing administration of the estate of the deceased in accordance with the certificate of confirmation issued on 27th May 2003 and rectified on 26th May 2008.
4. That the administrators shall complete administration of the estate in the next 45 days.

5. That the matter shall be mentioned after 45 days, on a date to be given in court at the delivery of this ruling, for the purpose of monitoring compliance.
6. That costs shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 26th DAY OF September, 2013.

W.M. MUSYOKA

JUDGE