

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE 2624 OF 2011

IN THE MATTER OF THE ESTATE OF PETER KARANJA MUIRURI (DECEASED)

RULING

I have perused the summons dated 6th February 2012 and the Supporting Affidavit sworn by **the Applicants, Nicholas Muchina Muiruri and Kevin Mbaka Muiruri** and the Petition for Letters of Administration intestate in the estate of the late **Peter Karanja Muiruri** filed on 25.11.2011 by the duo. I have also considered the submissions made by Mr. Ngugi, the learned counsel for the Applicants.

I observe that the Petition for Letters of Administration intestate has not yet been gazetted. The Petition and the summons show that the deceased was in the Military in Kenya and that he died intestate on 24th July 2011 at Ongata Rongai. At the time of his death, he was a widower. His wife, Margaret Wambui Muchina, predeceased him on 5th June 2006. He was survived by two of **his sons**, namely, **Nicholas Muchina Muiruri** and **Kevin Mbaka Muiruri** who are the Applicants herein. His **third son, Micheal Karanja Muiruri**, it is averred, died after the deceased while his **only daughter, Catherine Njeri** predeceased him.

The only heirs to the estate of the deceased are the two Applicants.

The deceased left an Estate comprising three parcels of land known as **NGONG/NGONG/38954**, and **Plot 8 at GITURU MARKET** and **Loc.2/MAKOMBOKI/312**. Although the Petition for Letters of Administration intestate does not disclose any other property in the deceased's Estate, in their application under Certificate of Urgency dated 6th February 2012, the Applicants seek orders that they be authorized to access Shs.200,000/= out of the sum of Shs.498,744/= which is said to be held by Kenya Tea Development Authority (K.T.D.A.) under Tea Growers Account No.MK 021-0207 pending the determination of the Petition. There is clearly an omission in the Petition in that the K.T.D.A. account has not been referred to. No doubt the Applicants will move with speed to rectify the anomaly in the Petition.

The Applicants aver that they reside in rented premises at Arizona Apartments at Rongai where they always lived with their father and that they are now within an ace of being evicted for non-payment of arrears of rent for the period from September 2011 to date which now total Shs.92,090/=. They also need, they say, money to cater for their day to day expenses relating to food and other household expenses. They add that taking care of the tea farm on Loc 2/Makomboki/3/2 left by their father which is part of the Estate requires money. At the moment, they say, they are not in gainful employment. It is for these reasons that they have come to court to seek an order for release to them of Shs.200,000/= from K.T.D.A. Tea Growers said account.

It is necessary that the persons seeking the money are in possession of a grant that places such persons in the shoes of the deceased who was the account holder and was entitled to the money. An order of this court that falls short of a Grant would not be in full compliance with Section 45(1) of the Law of Succession Act Cap 160. For the purpose of the order that Applicants require, a Petition for Special Limited Grant was necessary. There is no Application for such grant. The court cannot grant it when the application before it seeks something else.

For this reason, I decline to give the order sought. No doubt the Applicants will take steps to institute an appropriate application for the order they need.

The summons dated 6th February 2012 is dismissed with no order as to costs.

There shall be no order as to costs.

Dated at Milimani Law Courts, Nairobi, this 9th day of February 2012.

G.B.M. KARIUKI, SC
JUDGE

COUNSEL APPEARING

Mr. Ngugi of Wachira Nderitu, Ngugi & Co. Advocates for the Petitioner

Ms Pamela Osodo - Court Clerk