

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI LAW COURTS)

SUCCESSION CAUSE 34 OF 1988

IN THE MATTER OF THE ESTATE OF MICHAEL MORRIS OGUGA –(DECEASED)

RULING

The applicant in the summons dated 26th January 2012, namely, Leonida Onyango Oguga, is the co-administratrix of Esther Adhiambo Oguga (now deceased) by virtue of a Grant of letters of Administration ad Litem, issued to them (as the surviving widows of the late Michael George Oguga) on 26th July 1991. The said Grant was never confirmed and the estate has not been distributed.

The applicant prays that the said grant be revoked, following the death of her co-administratrix on 15th November 1997, so that the estate property, consisting of two immovable properties in Nairobi can be distributed to the surviving beneficiaries. She prays that a fresh grant be issued to herself and Daniel Oduor Oguga, a son of the deceased co-administrator. The present summons was filed alongside Consents of certain surviving beneficiaries to the making of a grant to the applicant and the said Daniel Oduor Oguga.

A similar application was filed on 8th July 2003, considered by the late Hon. Mr. Justice P.K. Kamau on 18th January 2005 and directions given for the filing of documents to confirm the heirs as per each household. The said order/directions appear not to have been complied with. The same do not seem to have been varied or set aside and would therefore appear to be in force. Apparently, on 2nd September 2003 this court appears to have issued a 15 days notice to the applicant under Sections 73 and 76 of the Succession Act requiring her to file an application for the confirmation of grant, failing which the grant would be revoked. The record bears no indication as to what became of the said notice. It is not clear, from the record, how the matter came to be listed for directions in the present summons when the orders of 18th January 2005 had neither been complied with, varied nor set aside. The request by this court for clarification from the Deputy Registrar did not elicit any useful answer.

The above notwithstanding however, I hereby exercise my powers under Sections 76 (e) of the Succession Act (Cap 160) and do hereby annul the grant issued herein on 26th July 2001 being of the considered view that the same has been rendered useless and or inoperative by the intervening circumstances, in particular the want of confirmation of the same within 1 year of issue and the death of one of the administrators.

Prayers (b) of the summons cannot issue in view of the non compliance with the order of 18th January 2005. The rightful heirs are at liberty to petition afresh with all the requisite documentation being filed for the court's consideration.

Orders accordingly.

DATED, SIGNED and DELVIERED at NAIROBI this 24th DAY OF May 2012.

M.G. MUGO
JUDGE

In the presence of :

Mr. Maina for the applicant.