

REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT NAKURU

SUCCESSION CAUSE 609 OF 2008

**IN THE MATTER OF THE ESTATE OF THE LATE MUIKAMBA NGETHE ALIAS MUSA
MUIKAMBA (DECEASED)**

RULING

This ruling relates to two applications. The first one was brought by Mary Wambui Gichuru who had been allowed by the court (Koome, J as she then was) to file a petition in respect of the estate of the late Muikamba Ngethe *alias* Musa Muikamba after the deceased person's son, John Karuga Kinyanjui declined to apply. It is an application for the confirmation of the grant.

But one of the sons of the deceased person is opposed to that application. James Samuel Kinyanjui has applied that the grant issued to the applicant be revoke or annulled for the reasons that the applicant has no proprietary interest in the suit land, LR NO.NAIVASHA/MARAIGUSHU BLOCK 11/148; that the suit land belonged to the deceased and the applicant can only claim against the estate; that should the grant be confirmed in favour of the applicant the dependants of the deceased shall be disinherited and the petition for grant filed in Nairobi H. C. Succ. Cause No.942 of 2010 shall be rendered nugatory.

The respondent has expressed the readiness to be substituted in this cause as the administrator so as to defend any claim against the estate.

I have considered the two applications and the arguments by counsel. The applicant claims ownership of the suit property and maintains that it was registered in the name of the deceased by mistake or fraud. Her reference to the defunct Naivasha Land Dispute Tribunal No.23 of 2005 was decided in her favour but subsequently quashed on the grounds that the tribunal lacked jurisdiction to entertain the dispute, as the applicant had not obtained a grant of representation for the estate of the deceased and also that the dispute did not come under any of the areas enumerated under **Section 3** of the repealed **Land Disputes Tribunal Act**.

It must be appreciated that the applicant is not a dependant of the deceased but only obtained the grant in respect of the former's estate after one of the sons declined to petition for a grant. She needed the grant in order to obtain the title to the suit land, which she maintains she occupies.

Now that a member of the family of the deceased has petitioned for a grant and is even willing to be substituted in this cause as a petitioner, the applicant appears not to have any objection to the last suggestion, her fear all along having been the delay in determining the question of ownership. In order to expedite the determination of the issue in controversy and in exercise of the court's discretion under **Section 47** of the **Law of Succession Act** and **Rule 73** of the Probate and Administration Rules, it is ordered:

- i) that Nbi. H. C. Succ. Cause No.942 of 2010 be stayed;
- ii) that the grant in this cause issued to the applicant, Mary Wambui Gichuru be and is hereby revoked;
- iii) that the respondent be substituted in the cause as the administrator of the estate of the deceased Muikamba Ngethe *alias* Musa Muikamba Ngethe and a temporary grant be issued to him, listing all the dependants, assets and liabilities;
- iv) that the applicant's pleadings be deemed to constitute a protest;

- v) that (iii) above be complied with within 14 days from today's date;
- vi) either party to be at liberty to file any affidavit they wish to rely on within that period;
- vii) matter be mentioned on 28th September, 2012 to confirm compliance and for directions as to hearing of the protest.

No orders as to costs.

Dated, Signed and Delivered at Nakuru this 3rd day of August, 2012.

**W. OUKO
JUDGE**