



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 213 OF 1997

IN THE MATTER OF THE ESTATE OF PERMINUS M'MUGAMBI (DECEASED)

JOSPINE KARIKA MUGAMBI.....1ST
PETITIONER

FLORENCE KINAITORE IMATHIU.....2ND
DEFENDANT

VERSUS

BEATRICE KAARI GUCHERA.....1ST
APPLICANT

LYDIA KURI MURERWA.....2ND
APPLICANT

RULING

There are three applications which are the subject of this ruling. I will begin by considering the one dated 13th June 2011. It is brought by David Kithinji Mugambi. It seeks an order that:-

“The letters (sic) of administration issued to Florence Imathiu and Josphine Kaarika (deceased) be rectified and amended and replace (sic) the said Josphine, Kaarika (deceased) with the applicant herein as the 2nd administrator.”

The applicant who seeks to replace Josphine Kaarika (deceased) as an administrator by that application is David Kithinji Mugambi. The background of this matter is that this court by its judgment dated 1st April 2009 distributed this vast estate amongst many beneficiaries. That judgment is the subject of an appeal filed by Mwongera Mugambi in the Court of Appeal. This court delivered a ruling which was dated 28th May 2010. It appointed Florence Kinaitore Imathiu and Josphine Kaarika now deceased as joint administrators in place of Festus Guantai Mugambi and Stephen Mwongera Mugambi Rintari. In doing so, the court stated in that ruling that those former administrators had failed to conclude this administration. On the passing away of Josphine Kaarika, David Kithinji by his application now seeks to replace her as an administrator. In his affidavit in support of the application, David stated that his deceased father had two houses. One house was of the wife Grace Nkoroi Mugambi and the other of

Anna Karambu Mugambi. Both those two wives are now deceased. David stated in his affidavit that because his deceased father had left behind a large family there had been sibling rivalry. This rivalry was heighten, according to him, by the court's appointment of Florence and Josphine, deceased as administrators. David was of the view that the rivalry was heightened because Florence and Josphine deceased came from the same house and therefore other house was not represented in the administration. David justified his application to replace Josphine deceased as administrator on the ground that he commands a lot of respect from both his mothers and step mother's house. He stated in his affidavit:-

“I am the best placed person to be appointed as co-administrator and restore sanity in the whole estate.”

In oral submissions before court in support of his application, David stated that he was seeking to be appointed as administrator in place of Josephine deceased to:-

“.....ensure our interest are taken care of. I will not put into effect the judgment of Emukule J. because we are appealing against it.

The judgment that he mentioned there is the one delivered on 1st April 2009. He relied on an order made by the Court of Appeal in Civil Application No. Nai. 196 of 2010 (UR 140/2010) to support his application that he be appointed as an administrator. It is important to consider that order to see its relevance to this application. It is as follows:-

“As the first respondent, Josphine Kaarika, is deceased, the motion cannot proceed to hearing today and we adjourn the same to a date to be re-taken in the registry after the parties have sorted out the issue of succession of the 1st respondent.”

That order was issued by the Court of Appeal on 11th May 2011. What I understand from that order is that the Court of Appeal requires someone to be appointed to represent the estate of Josephine Kaarika deceased. Such a person need not be an administrator in this particular estate. The estate of Josephine Kaarika deceased is different from this estate of Perminus M'Mugambi Rinturi deceased. The application was supported by Mwongera Mugambi Rinturi and Festus Guantai Mugambi. It was opposed by Roseline Nkirote Guchera, Beatrice Kaari Guchera and Florence Kinaitore Imathiu. David from his submissions before court seems to be in support of the appeal filed by Mwongera Mugambi against the judgment of this court of 1st April 2009. It seems therefore his intention of being appointed as an administrator in this matter is to frustrate the implementation of the court's judgment of 1st April 2009, which Mwongera Mugambi has appealed against. Although Mwongera Mugambi has filed an appeal against that judgment, he has not obtained stay pending appeal. In the absence of such stay, it would not be prudent to appoint David as an administrator in this estate who according to his word would not put into effect the judgment of 1st April 2009. The purpose for which a party would be appointed as an administrator in this matter would be to execute the judgment of 1st April 2009. It therefore follows that David Kithinji Mugambi is not a fit and proper person to be appointed as an administrator. The 2nd application that was argued before court is dated 17th January 2011. It seeks the rectification of the grant to include the different aliases that the deceased was known by and by which some of the properties were registered. The application was supported by all parties except Mwongera Mugambi Rintari and Festus Guantai Mugambi. The ground upon which they opposed the application was that the firm of L. Kimathi Kiara & Co. Advocates was not on record in this matter and therefore had no *locus standi* to file that application. On my perusal of this file however, I found that the said firm filed a notice of appointment to act on behalf of Lydia Kuri Murerwa a beneficiary in this estate. In the light of that, there is no basis for the ground raised in

objection of the application. It is also not a basis to refuse to grant the application on the ground that it will affect the record of appeal. The application dated 17th January 2011 is merited because it will assist to put into effect the judgment of this court of 1st April 2009. The 3rd application to be considered is the summons dated 23rd June 2011. It seeks the following order:-

“That the Hon. Court be pleased to vest all the powers and duties of administration of the estate of the late Perminus M’Mugambi Rintari, the deceased herein, to Florence Kinaitore Imathiu to enable her distribute the net estate to the beneficiaries.”

The application is supported by the affidavit of Beatrice Kaarika Guchera. She stated that since Josephine Kaarika the 2nd administrator is now deceased there is need to rectify the grant and the confirmed grant. She stated in her affidavit that on 18th and 22nd June 2011 Mwongera Mugambi and Festus Guantai Mugambi took potential buyers on the parcel *Ntima/Igoki/371* and 943 with a view to selling the same. It should be noted that those properties were not given to them by the judgment of 1st April 2009. She therefore stated that it is necessary to rectify the grant to enable the execution of the judgment of this court. The application was opposed by Mwongera Mugambi and Festus Guantai. The opposition is similar to the opposition raised against the application dated 17th January 2011. Since those grounds of opposition have been considered in this ruling, the court will not again consider them other than to state that they are not valid grounds to oppose the application. In the end, having considered the three applications I grant the following orders:-

1. ***The application dated 13th June 2011 is dismissed with no orders as to costs.***
2. ***An order is hereby issued that a fresh grant be issued in this matter to Florence Kinaitore Imathiu.***
3. ***That grant issued to Florence Kinaitore Imathiu shall reflect the names of the deceased as follows:-***

Perminus M’Mugambi alias Perminus M’Mugambi Rinturi alias M’Mugambi Rinturi alias P.M. Mugambi.

4. ***That grant issued to Florence Kinaitore Imathiu shall be confirmed in terms of this court’s judgment of 1st April 2009.***
5. ***There shall be no orders as to costs in respect of the Chamber Summons dated 17th January 2011 and the summons dated 23rd June 2011.***

Judgment by:-

**MARY KASANGO
JUDGE.**

Dated, signed and delivered at Meru this 21st day of July 2011.

J. LESIIT

JUDGE