



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
SUCCESSION CAUSE 272 OF 1999

IN THE MATTER OF THE ESTATE OF THE LATE

WILLY KIBII TEGUTWO DECEASED
AND
ELIZABETH CHEPKOECH TEGUTWO PETITIONER

RULING NO. 1

Confirmation of letters of grant intestate

1. The deceased Willy Kibii Tegutwo passed away on 25th February, 1998 aged 95 years old in Nakuru. The cause of death being cardio pulmonary arrest due to cerebral atrophy.
2. On the 9th November, 1999. One Esther Chepkoech Tegutwo filed Petition seeking grant of letters of administration interstate. On the very same day she filed form P&A 80, 11, and 12, instead of form 80, 12 and 5. There were two houses and she was described as the only widow survivor of the estate.
3. The magistrate deponed and commissioned her papers and on the very same day the magistrate immediacy dated the 9th November, 1999 her forms to be gazetted with the Government Printer which was accordingly done on 10th December, 1999.
4. This procedure was irregular as the law requires where a surviving spouse with adult children are left a petition P&A 80, list of survivors P&A 5 disclosing all the assets of the deceased in this case LR Kericho/Chemoiben/488 17.0(ha) having a charge of Kshs. 15,000/= loan to Barclays Bank. P&A 37 being the consent by all the surviving children that the petitioner should hold the property on life interest for the benefit of the Children.
5. Once all the papers are filed a notice is issued to the Principal Registry, normally to Nairobi (*Mombasa is also a Principal Registry for probate matters*) whereby a request is made to confirm that there are no other grant issued to other parties on the same estate. To confirm this the principal registry would issue form P&A 30.
6. In this cause No. P&A 30 form was issued. Instead a Kenya Gazette Notice was signed and issued on the same date as filing of the

- cause, namely 9th November, 1999.
7. Visram J issued letters of grant of 27th May, 2002 being the same day the grant was issued. This means between 1999 to 2002 no judge or deputy registrar had made orders on the file. It also meant that on 27th May, 2002 the letters of grant issued by Visram J was never sealed or released to the petitioner proposed administratrix.
 8. On the 5th August, 2004, the administratrix Esther Chepkoech Tegutwo passed away aged 86 years old due to cardio respiratory arrest due to congestive cardiac failure.
 9. For some unknown reasons the survivors of the estate filed application to substitute the deceased instead of filing a “*De Bonis Non*” to act in her place, when they did so, they changed the name of Esther Chepkoech Tegutwo to that of Elizabeth Chepkoech Tegutwo contrary to the death certificate.
 10. Musinga J allowed that application dated 12th October, 2006 and a new grant was issued dated 19.10.06 to James Kiprono Bii and Kipkurui Bii Bosuben.
 11. In 2007 M/S Bii V.K. & Co. advocate filed and entered a notice of appointment contrary to P&A 63 namely, that in probate matter the parties must apply to appoint an advocate of their choice and must sign such appointment.
 12. This court, on 13th November, 2008 struck out the proceedings as having been irregularly filed. The advocate has now filed a correct notice of appointment and sought prayers to confirm the grant.
 13. On perusal of the application the SURVIVORS have changed and are not the original survivors as named by the new petitioner. Esther Chepkoech Tegutwo did not file P&A 5. In the application for confirmation of grant she is described as Elizabeth and not Esther.

II: Opinion

14. This court, on behalf of Judiciary must apologize to the applicants herein as the mistakes occurring in this probate file would have been prevented if the then registrar Aburili (*now retired*) had been diligent.
15. Under **rules 41(2)** of the probate and administration rules I am permitted to defer the confirmation of the grant until the following is done:-
 - 15.i) **That form P&A 80,11,12,57 and 5 be re filed by one Petitioner only in this case James Kiprono Bii.**
 - ii) **That an explanation to discrepancy of the name of Esther Chepkoech Tetutwo to that of Elizabeth Chepkoech Tegutwo be explained.**
 - iii) **That an explanation be given in form P&A 5 of the actual age and relationship of the parties to the deceased and the house there are in.**
 - iv) **That the explanation be given as to the pending loan of Kshs. 15,000/= in Barclays Bank and liability thereon and if discharged or not.**
16. That there be a time line when all this will be completed. In order to facilitate this notice to issue to advocate to appear for Ruling on 14th July, 2009 at 9.00a.m and to complete this exercise on or before 22nd July, 2009 at 9.00a.m.

DATED this 14th day of July, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

Advocates

J.J. Onyango advocate from M/S Jamsubah Onyango & Co. advocate instructed to hold brief for

M/S V.K. Biii & Co. advocates for the Petitioner/Applicant - present