



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 1115 of 1993

IN THE MATTER OF ESTATE OF JOSEPH KARANJA – (DECEASED)

RULING

This is one of the matters where the Administrators completely assumed ownership of the estate after being issued with grant of representation of the estate, disregarding the plight of the other beneficiaries.

As per the petition of the four sons of the deceased in respect of the grant of Representation state that they are the elder sons of the deceased and that is why the other siblings, from other houses trusting them, gave their consent and the grant was issued to the four sons on 26th October, 1993.

No action to obtain certificate of confirmation was taken by the Administrators and eventually three objectors namely Edward Mukundi Karanja, Veronica Wanjiku Karanja and Emmanuel Mwangi Karanja filed summons for revocation of grant dated 24th November, 2005.

The summons was filed under the provisions of section 76, 83 and 94 of the Law of Succession Act and Rules 44, 49 and 73 of Probate and Administration Rules as well as all enabling provisions of law.

The objectors raised many issues against the Administrators namely; non disclosure of the fact that the deceased left a surviving spouse, failure to apply for confirmation of the grant, failure to administer the estate with diligence, sales of part of the estate before the confirmation, neglect to get in and avert waste of the assets of the estate, misapplication of the estate and loss and damage to the estate, failure to enforce claims against third parties, etc.

The administrators despite given opportunity have failed to respond either by replying affidavit or by adducing evidence to controvert the claims of the objectors. It is a sheer tragedy that this old matter is not heard and the Administrators have exhibited total indifference to the plights of other beneficiaries.

I am also perturbed to note that despite given a wake up call by this summons of revocation, the Administrators have refused to file summons for confirmation.

Furthermore, the Administrators have also failed to produce accounts of the estate till to-date, which is their foremost obligation to show that the estate is administered diligently. I further note with dismay that there was an order of this court dated 1st March, 2008 directing the Administrators to file the accounts within 30 days, which is flouted with impunity.

In the evidence adduced by the objectors, it is testified that all the properties disclosed in the petition generate income and the four Administrators are using the same for their own purposes depriving other beneficiaries of their rights to inherit and share. The Administrators have failed to pay land rates and rents on the assets of the estate and a property bearing parcel No.Dagoretti/Kangemi/S73 and S74 were advertised for sale on the Daily Nation of 26th and 27th April, 2007. the objectors were unaware of such action before they saw the advertisements. Their efforts to settle the matter in family meetings have borne no results.

I may pause here and state that even the record of the court file is full of such proposals of settlements by the Administrators on the dates when the matter was fixed for hearing. I have no hesitation to state that those were merely to derail or delay the hearing of the objectors' case.

It is also evident from the evidence and pleadings that this is a unique case where the Administrators have been flouting or violating all the provisions of the Act and Rules with impunity. I have also heard the evidence that the seriously ailing spouse of the deceased is also not properly looked after from the estate.

I am thus satisfied that the Administrators have failed to perform their respective duties as personal representatives as per Section 76 (d) and 83 of the Act.

I therefore order that the grant of representation issued to the four Administrators on 26th October, 1993 be revoked forthwith.

As this matter has been delayed under unfortunate circumstances, I direct that fresh grant be issued to Edward Mukundi Karanja and Veronica Wanjiku Karanja without the process of filing of petition and consequent process.

The previous Administrators are once again ordered to file the Accounts of the estate from the date of issuance of the grant of representation. i.e. 26th October, 1993 upto the date of this ruling within 3 months hereof.

The previous Administrators also shall pay costs of the objection proceedings personally and not from the estate.

I further direct that the new Administrators to file and serve the summons for confirmation within 21 days from the date of issuance of the grant.

Dated and signed at Nairobi this 16th day of September, 2008.

K.H. RAWAL

JUDGE

16.9.08