

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MERU

Succession Cause 425 of 2005

IN THE MATTER OF THE ESTATE OF BERNARD KIILU MUCHIRA (DECEASED)

HELLEN NKONYAI BERNARD PETITIONER

RULING

On 30th January, 2006 the Petitioners, Hellen Nkonyai Bernard and Lilian Sarah Kathirari, obtained grant of letters of administration intestate to administer the estate of Bernard Kiilu Michira, the deceased.

Subsequently on 12th July, 2006 the grant was confirmed. On 15th January, 2007 the first petitioner returned to court with an application seeking the rectification of the grant. She says this is necessary as the second petitioner, who is her cousin, has, since the issuance of the grant refused to be involved in the administration of the estate. It is also averred that the confirmed grant was issued in the name of the first petitioner's only. That the funds with the Public Trustee cannot be accessed on these grounds. As a result the deceased person's children are now out of school.

This application was served upon the 2nd petitioner who chose not to respond to it, hence the *ex parte* hearing. There are two issues the application raises. First the confirmed grant omits the name of the 2nd petitioner and the second matter is that the 2nd petitioner has declined be involved in administration of the estate herein. Consequently the applicant would like her son, Daniel Mutwiri Kiilu, to be appointed a co-administrator in place of the 2nd petitioner.

The first issue is clearly covered under the provisions of Section 74 of the Law of Succession Act under which this application is expressed to be brought.

That Section and Rule 43 of the Probate and Administration Rules provide for the circumstances under which errors in the grant may be rectified. Relevant to this application, an error as to the names or description of any person may be altered or amended accordingly.

The certificate of confirmation of the grant in this cause is in the name of the 1st Petitioner only. It is, therefore, a case for rectification by adding the name of the 2nd petitioner. But even with that, the applicant's main concern will not have been addressed.

Her concern is to have the 2nd petitioner replaced as an administrator by her son, Daniel Mutwiri Kiilu because the former has shown no interest in administering the estate. Section 74 of the Law of Succession Act is, in that regard, not helpful to the applicant.

Revocation of the grant under Section 76(a) (ii) of the Law of Succession Act will only delay the administration of the estate. It is however clear to me that the 2nd petitioner is not keen in co-administering the estate and has been an impediment causing the dependants suffering. For instance the children are now out of school for failure to pay school fees because the 2nd petitioner has not cooperated.

In the exercise of the powers provided for under Rule 49 of the Probate and Administration Rules, it is ordered that the appointment of Lilian Sarah Kathiari, as a co-administrator of the estate of the late Bernard Kiilu Michira be and is hereby revoked and in her place Daniel Mutwiri Kiilu is appointed with

effect from the date of this order.

Costs in the cause.

Dated and delivered at Meru this 15th Day of February, 2007

W. OUKO

JUDGE