

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Succession Cause 79 of 1984

IN THE MATTER OF THE ESTATE OF M'MURIIRA KANYIRU (DECEASED)

M'MUKIRA M'MATIRI OBJECTOR

VERSUS

M'ITONGA M'MUKIRA APPLICANT

RULING

The grant of representation in this cause was made to M'Itonga M'Muriira on 29th August, 1985. The objector was granted leave to file objection to the grant out of time.

The objection was argued but no ruling was delivered. Instead the parties were referred to arbitration by the D.O to determine the ownership of the estate. It is not clear what became of the arbitration but it is apparent that the cause was transferred back to court.

After several adjournments the petitioner brought an application seeking that one M'Magiri Renywa be appointed his Next Friend in respect of this cause on the ground that he (the petitioner) had become totally deaf and senile. That application was rejected as it turned out that the petitioner had a wife and a son who could be appointed instead of the said M'Magiri Renywa, who was said to be his nephew.

The petitioner promptly brought another application in which he was now seeking his son, Kinoti M'Itonga Muriira to be appointed his Next Friend. That was not to be as the petitioner thereafter died before the application was heard.

Again after numerous adjournments the application was finally granted on 13th May, 2002. Kinoti M'Itonga Muriira also passed away on 9th September, 2004 and his son, the applicant herein, Augustine Mwirigi Kinoti, has brought an application seeking to be appointed his legal representative on 24th November, 2004. The court, Lenaola, J found that the application was incompetent and directed that a proper application be filed for appointment of a legal representative of the original deceased M'Muriira Kanyiru.

In compliance with those directions the applicant brought this application, in which he is seeking to be granted letters of administration in respect of his father who died on 9th September, 2004, clearly referring to Kinoti M'Itonga Muriira. That is not what Lenaola, J directed.

The applicant was directed to bring an application to be appointed administrator of his grandfather, M'Muriira Kanyiru. The application is opposed on two grounds, namely that the procedure is faulty as the applicant ought to have applied for limited grant first and secondly that the petitioner having died in 2004, the suit has abated.

I must reiterate here that the limited grant issued to petitioner was in respect of the estate of the late M'Muriira Kanyiru. After the death of the petitioner any subsequent application must be in respect of the same property (estate). The applicant was expected to start the process of obtaining a grant in accordance with the provisions of Section 51 of the Law of Succession Act and Rule 7(1) of the Probate and Administration Rules.

The present application, for the reasons stated, is incompetent and is struck out with costs. The applicant has leave of this court if he still wishes to do so, to bring another application.

Learned counsel for the objector raised one point from the bar that the matter has abated. I suppose this proposition is based on the provisions of Order 23 Rule 3(2) of the Civil Procedure Rules. The simple answer to that proposition is in Rule 63 of the Probate and Administration Rules which clearly excludes the application of Order 23 from succession matters.

Orders accordingly.

DATED AND DELIVERED AT MERU THIS 22ND DAY OF JUNE, 2007

W. OUKO

JUDGE