



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
Misc Appli 30 of 2006

IN THE MATTER OF ESTATE OF JAVAN MWARARI MITHAMO.....DSD

AND

PETERSON MURIITHI MITHAMO.....APPLICANT

VERSUS

ELIUD NDUGUTU MUGO.....RESPONDENT

RULING

Application dated 24/3/2006 is brought under section 76 succession Act Cap. 160. The parties have indicated their desire that the application be decided on affidavit evidence alone.

The grounds set out is that the grant has become useless and inoperative through subsequent circumstances namely that the administrator Javan Mwarari Mithamo died on 3/12/2003 and nothing has been executed since the death. The grant was confined. But the administrator Milka Wangithi Mwarari lodged an appeal but she died thereafter on 3/1/2003. The record shows that in **P & A Cause No. 256/2006** one Eliud Ndugutu son of deceased was granted a limited grant in the estate of Milka Wangithi Mwarari to prosecute her **Succession Case No. 138/99** but this grant does not seem to have been effected yet. Eliud blames his brother Peterson Muriithi for misdirecting their mother.

Further the record shows that in **Succession Suit No. 231 of 2004** Peterson and his wife had made an application for a grant of administration of estate of the said mother.

I find that there is confusion in this family. It is not possible to distribute the estate of the deceased since the administrator is now deceased. I am satisfied that the grant has become useless and inoperative and the same is hereby revoked and annulled. Fresh application for the grant shall be made by any of the beneficiaries. It is so ordered.

No order as to costs.

Dated this 24th July, 2007.

J.N. KHAMINWA

JUDGE

24/7/2007

Khaminwa –Judge

Njue- Clerk

Ms Njeru for Respondent

Mr. Munene HB Chomba

Ruling read in open court.

J. N. KHAMINWA

JUDGE