



**IN THE MATTER OF THE ESTATE OF KIMANI KINUTHIA (DECEASED)**

**SIMON KUNUTHIA KARIUKI.....OBJECTOR/APPLICANT**

**-VERSUS-**

**BENSON KIMANI**

**HANNAH WANJIRU MUHUHU.....PETITIONERS/RESPONDENTS**

**KARUGA KIMANI**

**RULING**

This matter came before me for mention on 11th April 2005. On that day Mr. Ngigi Mbugua appeared for the objectors and Mr. Kisia held brief for Mr. Kimani for the petitioners.

The mention of the matter was to confirm whether or not a deceased petitioner, one Benson Njenga Kimani had been substituted by a personal representative, so that the succession cause could proceed further.

Mr. Kisia informed the court that a succession cause had already been filed for the appointment of a personal representative for the deceased petitioner Benson Njenga Kimani. However, letters of administration had not yet been issued by the court. He asked for a mention of the case within a month. Consequently the case was put for mention on 16th May 2005.

When the case came up for mention on 16th May 2005 there was no appearance for the petitioners. Mr. Ngigi Mbugua for the objectors submitted that, as there were two other surviving petitioners in the succession cause, the court should order that the matter proceeds with those two petitioners. In his view, there was an inordinate delay in substituting the deceased petitioner.

I have considered the request by Mr. Ngigi Mbugua. I have also considered that counsel for the petitioners informed the court on 11th April 2005 that letters of administration had been applied for in order to substitute the deceased petitioner with a personal representative appointed by the court. That the court had not yet issued the letters of administration applied for. The grant of letters of administration herein was confirmed on 23rd June 1995. There is a summons for revocation/annulment of the grant dated 11th September 2002 filed by Messrs. Ngigi Mbugua and Company Advocates for the objector. One of the three administrators B. N. Kimani, is said to have passed away in 2003, and is to be replaced by another administrator.

In terms of section 81 of the Law of Succession Act (Cap.160), the law provides that, where one or more administrators or executors dies, the powers and duties of administration shall vest in the surviving administrator or administrators. That section provides –

“81. Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them;

Provided that, where there has been a grant of letters of administration which involve any continuing trust, a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of the trust until the court has made a further grant to one or more persons jointly with him.

In our present case there are two surviving administrators, Hannah Wanjiru Muhuhu and Karuga Kimani. So even if there was continuing trust, they could still proceed with the administration of the estate without the necessity of replacing the third deceased administrator, Benson Njenga Kimani. The mandatory legal requirement for a deceased administrator to be replaced only arises when there is a continuing trust, and there is a sole surviving administrator who is not a trust corporation. In our present case there is no continuing trust as none of the beneficiaries is a minor. However, in general, even where there is no continuing trust, the law allows the beneficiaries to choose to have more than one administrator, provided the total number of administrators does not exceed four. It is apparent that this is what the two surviving administrators want in this case. It is not a legal requirement that the deceased third administrator in our present case should be replaced. Nor do I see any legal requirement that letters of administration for the estate of the deceased administrator should be obtained before his substitution.

Since beneficiaries can choose to have more than one administrator even in cases where there is no continuing trust, I will give a last chance for replacement of the deceased third administrator. Consequently, I order as follows: –

- i) That Counsel for the petitioner should file and serve documents on the succession cause relating to the third deceased administrator within seven days from today.
- ii) The surviving two administrators should confirm in writing by way of affidavits that that they require the replacement of the third administrator, and by whom. Such affidavits to be filed and served within 7 days from today's date.
- iii) Mention on 20th June 2005 before court for directions on replacement of the third deceased administrator.

**Dated and Delivered at Eldoret this 6th Day of June 2005**

**George Dulu**

**Ag. Judge**

**In the Presence of: Mr. Muhoro for petitioners.**

**Mr. Andambi h/b fro Ngigi Mbugua for objectors**