



**In re Estate of Christine Wanjiku Kamuyu (Deceased) (Succession Cause 552 of 1993) [2004] KEHC 2417 (KLR) (Family) (31 March 2004) (Ruling)**

*IN THE MATTER OF THE ESTATE OF CHRISTINE WANJIKU KAMUYU (DECEASED) [2004] eKLR*

Neutral citation: [2004] KEHC 2417 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**SUCCESSION CAUSE 552 OF 1993**

**MK KOOME, J**

**MARCH 31, 2004**

**IN THE MATTER OF THE ESTATE OF CHRISTINE WANJIKU KAMUYU  
(DECEASED)**

*(Ruling in respect of the Preliminary Objection dated 10th October 2003 against the Summons for confirmation dated 12th March 2003)*

### **RULING**

1. The applicant Hellen Wambui Kamuyu filed the Summons dated 12th March 2003 which is brought under the provisions of Section 71 (2) b, and Section 941 of the [Law of Succession Act](#) and Rule 40 and 16(1) of the P & A rules. The applicant is seeking for orders that the grant made to Peter Kinuthia Kamuyu and Paul Ng'ang'a Kamuyu be confirmed in the name of Hellen Wambui Kamuyu.
2. I will not repeat the other prayers which were not opposed as the Preliminary Objection was raised in respect to the request for confirmation of the grant in the applicant's name.
3. According to Counsel for the respondent, the applicant is not the holder of the grant. The Administrators are Peter Kinuthia Kamuyu and Paul Ng'ang'a Kamuyu. These are the people who are competent under Section 71 (1) and (2) it is only the holder of a grant who can apply: Section 71 (1) provides

“After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.”



4. Counsel therefore submitted that this section read together with Rule 40(1) of P & A Rules is quite clear on who should make an application for confirmation. Rule 40 (1) provides

“Where the holder of a grant which has not been confirmed seeks confirmation of the grant he shall apply for such confirmation by Summons in Form 108 in the Cause in which the grant was issued, supported by an affidavit in Form 8 and 9 exhibiting the grant together with an estate duty compliance certificate or other satisfactory evidence that no estate duty is payable and setting out the full names of the deceased person to whose estate the grant relates, and he shall satisfy the court that the application under part III of the Act is pending”-

5. The applicant disagrees that their application for confirmation lacks merit. Counsel for the applicant submitted that the applicant is a beneficiary of the estate. She was declared a beneficiary through a judgment of this court. Section 71 (2) (b) allows the court to issue the confirmed grant to some other person – or persons in accordance with the provisions of section 56 and 66 of the *Law of Succession Act*.
6. Since the holders of the grant have neglected to apply for confirmation, the grant should be confirmed in the applicant’s name.
7. I have given due consideration to the above submissions and the provisions of the law. The court has also noted with concern that the order appointing the Administrators of the deceased estate was issued on 25th May 1995. It has taken the Administrators too long to apply for the confirmation. However the provisions of the law are quite clear on who can make an application for confirmation. Section 71 (1) and read with rule 40 (1) if the P & A rules leaves no doubt on who can apply. It is upon the filing of the application and after the hearing of the application for confirmation that if the court is not satisfied with the grant holders that the grant can be issued to other persons. Section 79, 81, 82 and 83 all deal with the powers and duties of personal representatives. They are extensive. They have a duty to produce to the court a full and accurate account of the estate. In this regard I make a finding that the applicants prayers Nos. 3, 4, 5 are valid and the orders sought should be granted as they were not opposed. I will however strike out prayer Nos. 1 and 2 in respect of the confirmation of the grant to the applicant.
8. In this regard and as pointed out earlier should the Administrators be allowed to benefit from their own delay in bringing the application for confirmation. This court has a duty to protect all the parties and to ensure that there is no abuse of the court process. This inordinate delay is causing prejudice to the applicant while the administrators are in control of the estate.

I therefore direct the following:

9. The Administrators should apply for confirmation of the grant within 30 days of the date hereof. They should also comply with the prayers sought under No. 3, 4 and 5 within 30 days.
10. The applicant shall be entitled to half of the costs of this application. It is so ordered.

**RULING READ AND SIGNED ON 31ST MARCH 2004.**

**MARTHA KOOME**

**JUDGE**

