

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO.2413 OF 2003

IN THE MATTER OF THE ESTATE OF JAMES KIARIE MUIRURI

(DECEASED)

RULING

The Applicants in this summons for revocation of the grant that was issued and confirmed on 3rd April 2003 are daughters of the deceased and sisters of the Administrator of the deceased Estate respectively.

It would appear that the respondent William Muiruri, the deceased son petitioned for the grant of Letters of Administration of the Estates of his father James Kiarie Muiruri who died on 2nd March, 2001 and his mother Esther Njeri Kiarie who died on 22nd August 1992. It is not clear why the respondent made one joint application for letters of administration in respect of two deceased persons. It is not also clear why the court issued one grant of letters of administration in respect of two deceased persons. The grant was issued on 22nd February, 2002 and according to the court records the grant was confirmed on 3rd April 2002 after a period of only six weeks instead of the mandatory period of six months. According to the court records, the grant was confirmed by consent of all beneficiaries, although there are no consents on record pursuant to rule 26(1)(2) and 40(8) of the Probate and Administration rules. Again the court did not record which beneficiaries were present in court the record merely states: "By consent of all beneficiaries present, grant is confirmed." There is also no application on record that was brought under section 71(3) to confirm the grant before the expiration of six months as it is clear the grant herein was confirmed before the statutory period of six months.

In view of the above anomalies, the applicants have challenged the confirmed grant. In support of their application, they relied on their supporting affidavits and adduced evidence the gist of which can be summarized as follows:

That the respondent obtained the grant of letters of administration secretly and the applicants came to learn that a grant of the letters of administration of their father's estate was issued and that the deceased properties were transferred in the respondent's name in August, 2003.

That is when the applicants conducted a title search at the lands office and realized that a grant was issued in the name of the applicant in the Succession Case No.425 of 2001 at Thika. According to the applicants their consent and that of other beneficiaries was not sought and hence there was concealment of material facts by the respondent. This evidence was repeated by Jane Gathoni Kiairie, Margaret Wanjiru Kiarie and Rosebell Waithera all of whom are deceased children.

On the other hand the respondent maintained that the applicants were aware that he was applying for letters of administration. According to the respondent, the deceased had made an oral will whereby he had indicated how he wished his properties to be distributed. The respondent was in the process of distributing the properties according to the deceased wishes. The respondent also relied on the evidence of Mary Mwhaki Muiruri, his sister who condemned the applicants for referring this matter to court as there was no dispute. She contended that the respondent had consulted all the respondents.

I have given due consideration to the application and all the evidence adduced for or against the revocation of the grant. It is clear from the records that the consents of the beneficiaries was not obtained when the grant was issued and when it was confirmed. It would appear the grant was irregularly issued in respect of two deceased persons. There was no plausible reason why grant of representation would be issued in respect of two deceased persons in one grant. Another anomaly with the grant is in regard to the

confirmation which was done only after six weeks instead of the statutory period of six months. It is also not clear from the records how the application for confirmation was made. There is no application under section 71(3) on record.

In view of the above findings, the grant made herein and confirmed on 3rd April 2003 and all consequential transactions done pursuant thereto are hereby revoked. Since the procedure of obtaining the grant was totally defective, the parties are at liberty to make fresh application for separate grant of letters of administration in respect of each estate.

Since this is a family dispute each party should bear their own costs of this litigation.

It is so ordered.

Ruling read and signed on 28th May 2004.

MARTHA KOOME

JUDGE