



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
SUCCESSION CAUSE 132 OF 1994

In The Matter Of The Estate of Kairitu Mbuthu alias Kairitu Mbuthu Gakuya (deceased)

STEPHEN GIKONYO WAWERU.....APPLICANT

Versus

CAROLINE WAWIRA KAMUTU.....RESPONDENT/APPLICANT

Also

KAMUTU NJOGU.....PETITIONER/ADMINISTRATOR(Now Deceased)

And

DAVID WERU KARINGA.....APPLICANT(Now Deceased)

RULING

The parties in this Succession Cause are confusing and confused and as a result they attribute to themselves various titles most of them inappropriately so that some who have never been Petitioners are referred to or refer to themselves as Petitioners while those who have never been Objectors are referred to or refer to themselves as objectors.

Objectors are those who have filed objection under *Rule 17* of the Probate and Administration Rules. I have checked the case file. I do not find any such objection. It means there is no real objector in this succession cause.

Further, although the name Wanjiku Gikonyo is featuring in some documents as an objector in this succession cause, she is not an objector and I have not seen any of her application or an application against her to make her a party. In short, I think the parties should refer to themselves or should be referred to as shown on the first page of this ruling.

Mr. Gitonga who appeared for the applicant in the Chamber Summons dated 8th September 2003 stated to have been brought under *Order I Rules (II)* Civil Procedure Rules and *Section 3A* of the Civil Procedure Act told the court that his client Stephen Gikonyo Waweru is applying to be substituted in this succession cause as the 1st Respondent/Objector, David Weru Karinga. That is misleading as David Weru Karinga was not in this cause as a 1st Respondent/Objector. He was simply an applicant and this was in his Summons, dated 30th September 1978, for revocation of grant – still pending to-date. He made that application alone and the question of him being the “1st or “2nd” anything does not arise.

To avoid details in these confused proceedings with all the applications, not the petition, filed still pending, Mr. Gitonga has told the court that he has abandoned prayers (b) and (c) in the Chamber Summons dated 8th September 2003. Caroline Wawira Kamutu who had been served as the Respondent told the court that she was not opposed to the application. She supported it.

What happened in this succession cause is that following the petition of KAMUTU NJOGU for a grant of letters of administration in the estate of Kairitu Mbuthu alias Kairitu Mbuthu Gakuya (Deceased), the Grant was issued to him dated 21st July 1995. He thereby became the Administrator. But by the time he died on 27th May, 1997, that Administrator had not even applied for confirmation of that grant although it could have been confirmed as early as February 1996.

Following the Administrator's death, Caroline Wawira Kamutu, who claimed she was the widow of the Administrator, applied in her Chamber Summons dated 31st July 1998 to be substituted in the place of her husband. That Chamber Summons is still pending but it seems to have woken up David Weru Karenga who filed grounds of opposition dated 10th September 1998. He subsequently filed summons, dated 30th September 1998, for revocation or annulment of the Grant dated 21st July, 1995 issued to KAMUTU NJOGU.

The court is now being told that David Weru Karenga died on 9th March 2002 and that now his name is David Waweru Karinga. His application for revocation of Grant is still pending to-date. It must be the one in which the Applicant before me, Stephen Gikonyo Waweru, is seeking to be substituted in the place of David Weru Karinga to whom he refers as his father. During the hearing, Stephen Gikonyo Waweru remained silent about the fate of his similar Chamber Summons dated 9th April 2002 which he has left pending.

Although he is represented by advocates the Applicant keeps on filing applications by way of Chamber Summons in these Succession proceedings instead of using prescribed forms. That makes such applications defective and therefore incompetent and unmaintainable. Further, this Chamber Summons is brought under provisions of the Civil Procedure Act which are not applicable in Succession proceedings. That is another defect in the application.

Further still, and notwithstanding the fact that the Applicant has filed this Chamber Summons with consent of other members of his family, the court has not been given evidence to the effect that the applicant is a personal representative of David Weru Karinga. There is no evidence that the Applicant has obtained a grant of Letters of Administration in the estate of David Weru Karinga. The acquisition of that grant is necessary because the deceased's personal representative in accordance with provisions of the Law of Succession Act is the lawful person to replace the deceased in legal proceedings. Mere consent by members of the applicant's family does not convert the applicant into the deceased's personal representative under the Law of Succession Act.

The above having been said, and looking into this matter a little deeper, what is there in these proceedings that is making people fight? Mr. Gitonga told me that substitution will result into continuity of the proceedings and that no party will be prejudiced. Caroline Wawira Kamutu who had come to oppose the Chamber Summons conceded the same, hopefully, so that Stephen Gikonyo Waweru goes to confront her in her pending application dated 31st July 1998 also for substitution and in the summons for revocation grant.

Definitely, it is not being realized that while it may be proper to substitute a deceased applicant or objector or protestor, it may not be proper to substitute a deceased personal representative of another deceased person. I do not see it proper for Caroline Wawira Kamutu or any other person to be substituted for KAMUTU NJOGU in the Grant of Letters of Administration dated 21st July 1995. That is because KAMUTU NJOGU acquired that grant after going through a specialized procedure which included advertisement of the petition in the Kenya Gazette. After acquiring the Grant KAMUTU NJOGU became a personal representative of Kairitu Mbuthu alias Kairitu Mbuthu Gakuya under provisions of the Law of Succession Act which say nothing about substitution of a personal representative, but provides for

revocation or annulment of grant on various grounds which can cover death of a personal representative. It defeats the purpose for which gazettement is intended to allow a widow of a deceased personal representative or to allow any other relative or person to simply walk into the position of a deceased personal representative through the process of substitution. Let all of them have the opportunity to start afresh by beginning the process all over in separate succession proceedings.

If that is the position then David Weru Karinga's summons for revocation or annulment of grant would become useless because he could not litigate against a deceased person. It is noted that the said summons was filed after the said KAMUTU NJOGU had died. How valid was the summons for revocation or annulment?

All the above having been said and done, it is my considered opinion that following the death of the Administrator KAMUTU NJOGU, parties now litigating in this succession proceedings are engaged in irregular or defective proceedings which cannot end in their acquisition of a grant of letters of administration which is lawful within the provisions of the Law of Succession Act. The first thing those parties should have done would have been the filing of an application for revocation of the grant issued to KAMUTU NJOGU citing the ground that he had died and that therefore the grant had become useless and inoperative through subsequent circumstances. The parties have not done that to-date and to make them come out of this confused and confusing situation which will give them no lawful grant, I do revert to the court's power under *Section 76* of the Law of Succession Act and *rule 73* of the Probate and Administration Rules and do hereby order revocation of the Grant of Letters of Administration issued to KAMUTU NJOGU dated 21st July 1995.

The said revocation is ordered under *Section 76 (e)* of the Law of Succession Act upon the court's own motion and that marks the end of litigation in this Succession Cause in this court. Those wishing to obtain a grant of letters of administration in the estate of Kairitu Mbuthu alias Kairitu Mbuthu Gakuya (Deceased) are, however, at liberty to commence fresh proceedings in a new and separate succession cause, this time, remembering that once such proceedings are commenced, they should be prosecuted diligently up to confirmation of grant without the petitioner or administrator going to sleep to give opportunity to problems to arise. Had Kamutu Njogu been diligent, he would have completed the administration of the estate of his father without any disagreement having arisen and long before the said Kamutu Njogu died.

Dated this 8th day of December 2004.

J. M. KHAMONI

JUDGE