

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

SUCCESSION CAUSE NO 124 & 125 OF 1996

IN THE MATTER OF THE ESTATE OF MORISON MUHIKA NJOROGE (DECEASED)

RULING

The application before the Court is a summons for confirmation of a grant of letters of administration intestate and is made by Susan Wanjiru Njoroge, the mother of the deceased Morison Muhika Njoroge and the deceased's two sisters Mary Wambui Njoroge and Mary Wanjiku Nganga.

The date of the grant of letters of administration to be confirmed is not stated in this application. However, in an affidavit in support of the same filed on the 9th July 2002, the applicants have deponed that the said grant was issued on the 11th April 1996.

Upon my examination of the pleadings in this cause I have established that the 11th April 1996 is the date of the deceased's death and not the date of the alleged grant of the letters of administration.

I have also perused a ruling delivered by Lady Justice R Nambuye on the 18th May 1999 which is dated 10th May 1999 and I find that, for reasons which are given in that ruling, a grant of letters of administration intestate was issued to Mr Clement Kinuthia Njoroge, Mr Michael Peter Njoroge, Mr Mburu Karichu and Mr Gerald Muhika Njoroge.

I have further gone through all the pleadings filed in this cause. I have not come across any appeal having been filed against the appointment of these people as the administrators of the deceased's estate. Even if an appeal had been filed, a decision of a competent appellate court setting aside that appointment has not been shown to me.

It has therefore been established that the administrators of the deceased's estate, so appointed on the 18th May 1999 by this court presided over by

Lady Justice Nambuye are the same Clement Kinuthia Njoroge, Michael Peter Njoroge, Mburu Karichu and Gerald Muhika Njoroge. Indeed a grant was issued to them on the 24th July 2000.

Pursuant to the provisions of section 71(1) Law of Succession Act cap 160, the holder/holders of a grant of representation are the ones to apply for confirmation of the same after the expiration of the period of six months or such shorter period as the Court may direct on application of such holder of representation. As the applicants are not the holders of the grant of representation, this summons for confirmation of the grant is for rejection. The preliminary objection raised by Mr Nyairo is upheld and the application now before me for confirmation of the grant is dismissed.

The applicants, particularly Mary Wamboi Njoroge, Mary Wanjiku Nganga and Clement Kinuthia Njoroge feel very strongly that they are the most suited survivors of the deceased to administer his estate. Mr Clement Kinuthia Njoroge put it blatantly that the property of the deceased should be administered by the children of Susan Wanjiru Njoroge.

That the property of a deceased person should remain within the control of his immediate family members is normally the wish of everyone. Unfortunately not all wishes can be freely granted, particularly those wishes which are subject to the operation of law. The wishes of the deceased's brothers and sisters must be given effect only through the operation of the provisions of the Law of Succession Act.

The surviving beneficiaries of the deceased who are entitled to shares of his estate are his two adopted children (a) Elizabeth Wanjiru Muhika and Stephen Njoroge Muhika (b). Such of the deceased's parents, brothers and sisters who were being maintained by him immediately prior to his death. This is provided for under section 29 of the Law of Succession Act.

The duty now lies on the appointed administrators of the deceased's estate to identify that entire estate and come up with the mode of its distribution. As and when they complete that exercise, they may then apply for confirmation of that grant issued to them on 27th July 2000 showing their proposals.

These are the orders of the Court.

Dated and delivered at Eldoret this 20th day of February, 2003

A.G.A. ETYANG

.....

JUDGE