

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
PROBATE AND ADMINISTRATION CAUSE NO. 2322 OF 1995

**IN THE MATTER OF THE ESTATE OF HUMPHREY EDWARD GITHURU KAMUYU
(DECEASED)**

RULING

On 30th July 2001, Hon. Justice Alnashir Visram, delivered a Ruling in H.C Succession Cause No. 2322 of 1995, as consolidated with H.C Succession Case No. 1733 of 1995.

In the Ruling, the learned Judge revoked the grant of letters of administration issued to Stephen Njuguna Githuri, and confirmed the deceaseds' will which declared Loise Margaret Waweru, the sole executrix of the deceased's will. The Ruling also declined to make an order for dependency under Section 26 of the Succession Act, in favour of the applicant Stephen Njuguna Githuri.

The executrix applied for confirmation of the grant of probate to the deceased's estate subsequently. She prayed that the properties in the deceased's estate, be distributed as "per the will and the annexed affidavit".

I confirmed the grant of probate issued by this court on 29th November 1995. I did this on 10th day of December 2001. Stephen Njuguna Githuri, applied to this court once more for a Review of the order confirming the grant of probate. His application is brought on the basis that

(a) "There is an error on the face of the record as the certificate of confirmation does not conform with the will it purports to execute",

(b) "The certificate of confirmation offends the will and the judgment of Hon. Justice Visram dated 30 th July 2001".

The application is supported by his affidavit dated 27th June 2002. The executrix Loise Margaret Wangui Waweru, filed a replying affidavit dated 9th July 2002. She refuted the averments by the applicant Stephen for Review.

Both advocates consented to submit written submissions to court. I granted their request and received their submissions.

I consider the following to be the important documents to consider in this application for Review. First is the Ruling by Visram, J dated 30th July 2001. I have read it carefully and I find it quite comprehensive in this matter.

There is of course the application for Review, and the supporting affidavit, which affidavit is amply replied to by the affidavit of the executrix.

Another very important document is the will itself, which was upheld by Visram, J in his said Ruling.

The English translation of this will is one of the annexures to the application for Review. When I look at the contents of the will alongside the Ruling of Visram, J I find no variance. In fact the Ruling, according to me, explains how the deceased divided his property, during his life time, to begin with, and secondly, in case of his demise. Page 5 of the Ruling is quite clear about land parcel No. Kabete/Lower Kabete/520. This land was bequeathed and divided when the deceased was still alive. I have also read the evidence which was adduced at the trial before Visram, J.

From all this, I have come to the conclusion that the certificate of confirmation of the grant of probate

conforms with the will and the Ruling by Visram, J. I do not find any error on the face of the record, neither do I find that “the certificate of confirmation offends both the will and the judgment of Justice Visram, dated 30th July 2001. I find no merit in the application for review, and the same is therefore dismissed with costs to the executrix, Loise Margaret Waweru.

Dated at Nairobi this 30th day of July 2003.

JOYCE ALUOCH

JUDGE