

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 2480 OF 2000

IN THE MATTER OF THE ESTATE OF HARUN MUHIA MUGONYI

ALIAS MUHIA MUGONYI (DECEASED)

R U L I N G

Francis Wainaina Muhia herein also referred to as the Objector filed the summons dated 10th November 2000 for revocation of grant alleging fraud, concealment of some beneficiaries and assets and failure to administer the estate on the part of the Administrator of the estate Raphael Mbucho Muhia.

After carefully considering all that has been brought to my attention, I find that the Objector was a full participant in the succession proceedings which took place in Succession Cause No. 56 of 1994 in the Senior Principal Magistrate's Court at Kiambu where he raised no complaint or objection. I also find that there was no fraud, or if there was fraud, the Objector has failed to prove it.

I however, find that there has been delay on the part of the administrator in distributing assets in the estate of the deceased, the relevant certificate of confirmation of grant having been made on 8th September 1994. The Objector filed this objection on 14th November 2000. It is that delay which gave the Objector the opportunity to change his mind from his position as a full and non objecting participant in the petition for grant to an objector.

The Objector is not objecting because he was left out but he is objecting because some people and some assets he feels should have been included were left out. He does not explain why he did not think of their inclusion at the time Succession proceedings were in the Court at Kiambu. He has not filed a petition by way of cross petition.

Although in the summons dated 10th November 2000 the Objector says that the grant of letters of administration issued to Raphael Mbucho Muhia on 29th August 1994 be revoked, I find that what the Objector actually wants is the inclusion of his two sisters as beneficiaries and thereafter the re-distribution of the estate of the deceased among all beneficiaries.

I have been told that as the objector is pursuing his objection in this court, the Administrator had already filed his application in the Senior Principal Magistrate's court at Kiambu praying for re distribution of the estate. That is in order even if beneficiaries are also to be increased in number. All that is perfectly within the jurisdiction of the Senior Principal Magistrate's court as no revocation of grant is necessary and I have found that in the absence of the evidence proving fraud, there is no justification for revocation of grant as the delay in distributing the estate can be excused, the Administrator having now woken up, and was also a blessing in disguise because the Objector can to-day find all the assets available to be re-distributed even to a bigger number of beneficiaries if the magistrate's court so finds and allows. Reasons have been given for the delay and this court accepts those reasons.

From what I am saying above, therefore, I do hereby dismiss the summons dated 10th November 2000 for revocation of grant, and do direct that the parties go back to the Senior Principal Magistrate's court at Kiambu for re-distribution of the estate, with or without an increased number of beneficiaries as that court may deem fit, through a summons for rectification of the certificate, dated 8th September 1994, for confirmation of grant.

As this is a family matter, each party to bear its own costs of the proceedings in this court.

Dated this 14th day of June 2002.

**J.M.
JUDGE**

KHAMONI