

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 3 OF 1997

IN THE MATTER OF THE ESTATE OF STEPHEN NJOGU

MUNGAI (DECEASED)

MARGARET NJERI NJOGU APPLICANT

VERSUS

GERGE MUNIU MUNGAI 1ST RESPONDENT

NATIONAL BANK OF KENYA 2ND RESPONDENT

R U L I N G

From what has been brought to my attention during the hearing of this summons dated 14th October 2002, the same be and is hereby dismissed for the following reasons:

Firstly, I get the impression that the Applicant, Margaret Njeri Njogu is behaving unreasonably by not listening to the good advice to her from the Respondent George Muniu Mungai who is her Co-Administrator.

Secondly, before making this application, the Applicant should have first ensured that an amended certificate of confirmation of grant she is trying to effect, has been issued in compliance with this court's order dated 23rd September 2002. To-date no such an amended certificate has been issued and it is not enough to rely on an extracted court order in this matter.

Thirdly, although this summons is properly brought under Rule 44(1) of the Civil Procedure Rules for a review, none of the grounds specified in that rule is being relied upon thereby making the application objectionable.

Fourthly, in Probate and Administration Proceedings where the Executor or Administrator has to exercise his powers and perform his duties the Registrar or a deputy registrar of this court has no authority under the Law of Succession Act and its rules to exercise those Powers and perform those duties as

any failure on the part of the Executor or administrator can be adequately addressed under the Provisions of the Law of Succession Act and Probate and Administration Rules.

In conclusion, unless the Respondent does not want it, the Applicant to personally pay costs of this application to the Respondent George Muniu Mungai, without touching any asset in the deceased's estate for that purpose.

Delivered, dated and signed at Nairobi this 7th Day of November 2002.

J.M. KHAMONI

JUDGE