



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

Coram: D. K. Kemei - J

SUCCESSION CAUSE NO. 18 OF 2019

IN THE MATTER OF THE ESTATE OF PETER MUIA NDUNDA (DECEASED)

ZUENA NGANDO KABABU.....OBJECTOR

VERSUS

LITHER PETER MUIA.....1ST PETITIONER

ROSE PETER MUIA.....2ND PETITIONER

RULING

1. The subject of the instant ruling is the notice of withdrawal dated 20th January, 2021 that was to the effect that the petitioners sought to withdraw the petition for letters of administration with no order as to costs.
2. Counsel for the petitioners placed reliance on Order 25 of the Civil Procedure Rules and the case of **Kofinaf Co Ltd & Another v Nahashon Ngige Nyagah & 20 Others (2017) eKLR** in submitting that the petitioners had a right to withdraw the petition and the court could not take away that right. Counsel prayed that the petitioners not be condemned to pay costs of the withdrawal.
3. In response, counsel for the objector in placing reliance on the case of **Beijing Industrial Designing & Research Institute v London Development Ltd (2015) eKLR** took issue with the lack of consent and submitted that the petitioners are not entitled to withdraw the petition but may cease to act as petitioners and leave the other beneficiaries to proceed with the petition.
4. The background to this matter is that the Court of Appeal vide a judgement dated 20.12.2017 revoked the grant that was issued on 15th October, 2004 and directed that the matter be referred to the high court for issuance of letters of administration and distribution of the estate to include the objector and her children.
5. The effect of the revocation was that the names of the petitioners were removed from the grant and in effect their petition was spent; there is nothing to withdraw. The grant having been revoked stripped the petitioners of the requisite locus standi to purport to represent the estate of the deceased. The petitioners and all beneficiaries were literally pushed back to the drawing board as they have been ordered to start the process afresh by filing a fresh application for letters of grant. It is strange that counsel has gone at length to believe that there was a petition to be withdrawn. What remains was to file a fresh application and indeed this court directed the parties to **file a fresh application for grant in respect of the estate of the deceased within 60 days of the date of the ruling that was delivered on 19th September, 2019 failing which the court shall proceed to appoint administrators.**
6. I have seen the application dated 26th January, 2021 filed by the Objector and note that this is in no way near the provisions of sections 51, 67 and 68 of the Law of Succession Act on application for a grant. Section 51 of the Act provides that application for grant ought to be by way of a petition.
7. As it stands, there is no proper application for letters of administration in compliance with the law and with the ruling delivered on 19th September, 2019.
8. It is noted that the petitioners have not approached the Court of Appeal for review of its judgement whose tenor and purport is still in force. As the grant has been revoked, the status of the petitioners as administrators is no longer in force as the estate of the deceased is now without administrators. All beneficiaries including the objector have an interest in the estate and that had the petitioners been clothed with

capacity to represent the estate then the consent of all beneficiaries and the objector would have been needed to support the notice of withdrawal of the petition but as the grant had been revoked then the petitioners now do not have capacity to act in any manner regarding matters of the estate. The petitioners and the objector ought to abide by the orders of the Court of Appeal dated 17.12.2017 and this court's ruling dated 19.9.2019.

9. In the result, it is my finding that the Petitioners notice of withdrawal dated 20.01.2021 lacks merit. The same is dismissed with no order as to costs.

It is so ordered.

Dated and delivered at **Machakos** this **18th** day of **May, 2021**.

D. K. Kemei

Judge