



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 16 OF 1988

IN THE MATTER OF THE ESTATE OF LABAN KINGORI MACHARIA (DECEASED)

ZAWERIA WANGARI KING'ORI

FRANCIS MWANGI KING'ORI

ANTHONY MAINA KING'ORI.....APPLICANTS

VERSUS

JOHN MWANGI KING'ORI.....RESPONDENT

RULING

1. What is for determination is an application for revocation or annulment of grant brought by way of summons dated 18th May, 2021 supported by an affidavit of even date. It seeks that the grant of probate issued to John Mwangi King'ori on 30th March, 1988 and confirmed on 21st January, 2014 and 26th April, 2014 be revoked and or annulled for reasons that the Grant has become inoperative following the death of the Executor, John Mwangi King'ori. Further that the court appoints Zaweria Wangari Mwangi, Francis Mwangi King'ori and Anthony Maina King'ori as administrators of the Estate of the deceased.

2. The Executor John Mwangi King'ori died on 22nd January, 2021 before completing the administration of the Estate. A Certificate of Death of serial number [particulars withheld] is on record. At the date of his death, the administration of the estate of the deceased had not been completed, and none of the assets had been transmitted to the deceased's beneficiaries.

3. It was proposed that the court appoints Zaweria Wangari Mwangi, Francis Mwangi King'ori and Anthony Maina King'ori as administrators and a Grant of Letters of Administration and a Certificate of Confirmation of Grant issue in the names of the appointed administrators. The proposed administrators represent the first, second and third houses respectively. There is on record a Consent duly signed by the deceased's beneficiaries affirming the appointment of the proposed administrators.

4. At the hearing of 13th July, 2021, Mr. Mwangi Chege Advocate for the Executor proposed that one Solomon Irungu Mwangi, a son of the deceased's Executor be added to the list of the proposed administrators.

5. Mr. Njiraine Advocate for the Applicants/Beneficiaries opposed the appointment of the said Solomon Irungu stating that he is a grandson of the deceased. He urged that the three proposed administrators are the children of the deceased, one from each of the three houses of the deceased. Zaweria Wangare is in the house from which the Executor who died hailed. His sentiments were echoed by Ms. Ngugi Advocate for the beneficiary Zaweria Wangare.

6. It was Ms. Ngugi's submission that there can be no representation of an Executor by a grandchild where the children of the deceased are present. She contended that Mr. Mwangi Chege Advocate had no capacity to be in these proceedings until the said Solomon Irungu obtains a grant of representation in the Estate of the deceased Executor, to preserve his share in the Estate of Laban King'ori (deceased) whose estate is in issue. She urged that the proposed substitution by the deceased's grandson was not lawful.

7. Mr. Simiyu Advocate for the Beneficiary Margaret associated himself with the sentiments of both Ms. Ngugi and Mr. Njiraine. He asserted that the House from which the deceased Executor hailed has a representative and urged that the Administrators proposed by Mr. Njiraine be appointed.

8. In his rejoinder, Mr. Mwangi Chege asserted that the value of the Executor's property was more than all the other properties. Therefore, that it was necessary that one of the appointed administrators hail from the house of the deceased Executor.

9. A reading of **section 65** of the **Law of Succession Act** reveals that upon the death of a sole Executor, letters of administration may be

granted to the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate. In the instant case, the three proposed administrators are children of the deceased while one Solomon Irungu is the grandchild of the deceased through the deceased Executor. The net intestate estate of a deceased who is not survived by a spouse devolves to their children. As such, the children of the deceased rank in higher priority to the deceased's grandchildren.

10. This court is cognizant of the fact that grandchildren can inherit from the estate of their deceased grandparents as was held in **Cleopa Amutala Namayi vs. Judith Were [2015] eKLR**. The instant application is however only for appointment of administrators to finalize the distribution of the deceased's estate. In any case, Solomon Irungu has not shown that he has obtained a grant of representation in the Estate of John Mwangi King'ori, the deceased Executor.

11. It is my considered view therefore, that it is the three applicants, Zaweria Wangari Mwangi, Francis Mwangi King'ori and Anthony Maina King'ori who ought to be appointed administrators of the estate of Laban King'ori Macharia (deceased). Not only are the proposed administrators children of the deceased, but they are also representatives of each of the three houses of the deceased's late wives. Additionally, the beneficiaries in the respective houses have consented to the appointment of the proposed administrators to ensure representation from each of the Houses.

12. Based on the foregoing, I am persuaded that the application for revocation or annulment of grant brought by way of summons dated 18th May, 2021 is merited. I hereby allow it with orders as follows:

- a. The Grant of probate issued to John Mwangi King'ori on 30th March, 1988 and confirmed on 21st January, 2014 and 26th April, 2014 be and is hereby revoked.
- b. Zaweria Wangari Mwangi, Francis Mwangi King'ori and Anthony Maina Kingori be and are hereby appointed administrators of the Estate of Laban Kingori Macharia (deceased).
- c. A Grant of Letters of Administration with written will annexed and a Certificate of Confirmation of Grant do issue to the said appointed administrators.
- d. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED IN VIRTUAL COURT THIS 13TH DAY OF JULY, 2021.

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L. A. ACHODE

HIGH COURT JUDGE

In the presence ofAdvocate for the Executor.

In the presence ofAdvocate for the Applicants/Beneficiaries.

In the presence ofAdvocate for the Beneficiary Zaweria.

In the presence ofAdvocate for the Beneficiary Margaret.