



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

SUCCESSION CAUSE NO. 31 OF 2016

IN THE MATTER OF THE ESTATE OF SAMSON NYAMBATI NYAMWEYA (DECEASED)

JUDSON NYAMBANE.....APPLICANT

VERSUS

ALICE KERUBO NYAMBATI1ST RESPONDENT

CHARLES RATEMO NYAMBATI.....2ND RESPONDENT

RULING

1. In an application dated the 2nd December 2019 brought under section 76 of the Law of Succession Act (the Act) Rules 44 (1) and 73 of the Probate and Administration Rules, Judson Nyambane (the applicant) seeks the follows orders;

- i. That the grant of letters of administration to Alice Kerubo Nyambati and Charles Ratemo Nyambati made on the 12th July 2019, be revoked and or annulled.
- ii. That the applicant Judson Nyambane be appointed administrator of the Estate of the deceased along with Alice Nyambane and Charles Ratemo.
- iii. That costs be provided for.

2. The application is based on the grounds stated on the face of the application and the affidavit of the applicant. The applicant states that he is a son of the deceased Samson Nyambati Nyamweya and the 1st respondent. That the deceased left a will dated the 15th November 1996 and appointed executors of his Will as follows: Peris Nyoando Nyambati (deceased), Alice Kerubo Nyambati, Charles Ratemo Nyambati or Issac Onyangore and Martin Oigara or Judson Nyambane. Charles and Martin Issac Onyangore are children of the 1st wife and Martin Oigara and Judson, the applicant are children of the 1st respondent. That in its Ruling dated the 12th July 2019 this court appointed the 1st and 2nd respondents administrators of the estate of the deceased. That this court indicated that Martin Oigara, Issac Onyangore and him are at liberty to indicate their desire to be administrators as willed by the deceased. That it has become difficult for the 2 administrators to administer the estate and that it is imperative that an additional administrator be appointed to stand between them and help in the administration of the estate.

3. The application was opposed. The 2nd respondent filed grounds of opposition to the summons. The grounds state that the applicant is not legible to be appointed as an administrator because he has intermeddled with the estate of the deceased jointly with his mother. That the applicant is the agent of Alice Kerubo Nyambati and it is made to concentrate the administration of the Estate in her house to the exclusion of the house of Peris Nyoando. That Alice and the applicant have engaged in wastage of the estate. That the applicant and his mother arrogantly and callously act as if the deceased's Will does not exist and also as though Peris Nyoando and her children never existed or lived and the application is an abuse of the court process.

4. I have considered the application, the contents of the deceased's Will dated the 15/11/96 and the law. At the conclusion of his Will the deceased stated as follow:

***“It is my sincere hope that each member of the entire family would author and comply with whatever has been indicated in this WILL document without any condition. In case of any problem arising out of this WILL document is should be settled amicably with the assistance of my two wives, two sons (Charles Ratemo and Martin Oigara) or (Issac Onyangore and Judson Nyambane) and any three of five brothers and not the court of law.*”**

My two wives (Peris Nyambati and Alice Nyambati) plus the above sons will also be administrators of my ESTATE.

This legal declaration document has been duly executed as from the FIFTEENTH DAY of NOVEMBER of the YEAR ONE THOUSAND NINETY HUNDRED AND NINETY-SIX (15th November, 1996).

5. It is correct as that I stated in my Ruling dated 12/7/2019 that the others sons mentioned in the Will were at liberty to apply to be administrators. The allegations made in the grounds of opposition were not supported by any affidavit. They therefore remain allegations, and cannot be used to bar the applicant from seeking to be an administrator. I note that the Will is not contested. Section 60 of the Act provides as follows;

“60. Probate where there are several executors

When several executors are appointed, probate may be granted to them all simultaneously, or at different times.”

6. The deceased’s Will which has been partly reproduced clearly states the 2 wives and the four (4) the sons indicated will be administrators of the estate. This was the wish of the deceased. The applicant is one of the 4 sons mentioned in the Will. It is obvious that the 1st and 2nd respondents are not in agreement. In my view the application is proper and I find no good reason to disqualify the applicant from being an administrator.

7. The applicant seeks a revocation of the grant of Letters of administration issued to the 1st and 2nd respondent. It appears that his main ground is that it has become difficult for the 2 to administer the estate, thus he seeks to have the grant revoked and another issued to himself plus the 1st and 2nd respondents as administrators.

8. Section 76 of the Act details the circumstances under which a grant of letters of administration may be revoked. The only part of section 76 that could apply to the applicant’s case is section 76 (d) (ii)

“that the person to whom the grant was made has failed, after due notice and without reasonable cause either—

(ii) to proceed diligently with the administration of the estate; or”

iv. The 1st and 2nd respondents have had some disagreements and various applications have been filed in this matter. The cause has been pending determination from 2016, about 5 years now. Is it therefore necessary to revoke the grant as sought? In my view bearing in mind the deceased’s wishes and the relationship between the parties, I will exercise my discretion and allow the applicant’s application. The grant of letters of administration to **Alice Kerubo Nyambati** and **Charles Ratemo Nyambati** made on the 12th July 2019 is hereby revoked. The applicant **Judson Nyambane** is appointed administrator of the Estate of the deceased along with **Alice Nyambane** and **Charles Ratemo**. No costs as to costs.

DATED, SIGNED AND DELIVERED AT KISII THIS 22ND DAY OF SEPTEMBER, 2021.

R.E.OUGO

JUDGE

In the presence of:

Mr. Munyori For the Applicant

Mr. Nyamu For the Respondent

Mr. Orwasa Court Assistant