

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 798 OF 2013

IN THE MATTER OF THE ESTATE OF JEREMIAH KAMAU MUCHIRI (DECEASED)

RULING

1. The application for determination is the summons dated 18th December 2015, which seeks confirmation of the grant herein. It is brought at the instance of Joseph Muchiri Kamau and Elizabeth Waithera Njoroge, who I shall refer to hereafter as the applicants. It carries proposals on distribution of the assets of the estate. There is an attached consent n Form 37, duly executed by Joseph Muchiri Kamau, Elizabeth Waithera Njoroge, Francis Ndung'u Kamau, Gladys Muthoni and Milka Mugure Kamau.
2. There is only one objection to the distribution, by Peter Wainaina Kamau, through a protest affidavit, sworn on 8th September 2016. I shall refer to him as the protestor. He raises only two principal objections: that motor vehicle KDY *** did not belong to the estate, for he had bought it; and that the deceased had died testate having left a will. The protest affidavit on record does not have any annexures. There is, therefore, no evidence that KDY *** had ceased to be estate property, and equally there is no evidence that the deceased had made any will, leave alone a valid one.
3. The applicants filed separate affidavits, in response, which are perfect replicas of each other, essentially making a variety of accusations against the protestor.
4. I have not found anything substantive in the protest. The protestor has not presented any material to show that he owned the vehicle he claims he bought from the deceased. He has equally not attached copy of the will that he says the deceased made. He who alleges must prove. He has said nothing about the distribution proposed by the applicants, and I shall take it that he has no concrete objection to it.
5. In the end, I find no merit at all in the protest. Since there is no serious opposition to the proposals made in the summons for confirmation of grant, dated 18th December 2015, I shall allow the same. The estate shall be distributed as proposed. A certificate of confirmation of grant shall issue accordingly. Any party unhappy with these orders has leave of 28 days to move the Court of Appeal appropriately.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 17TH DAY OF SEPTEMBER 2021

W MUSYOKA

JUDGE