

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 17 OF 2019

IN THE MATTER OF THE ESTATE OF NAFTALI HUTTON AYODI (DECEASED)

RULING

1. The deceased herein died testate, having made a valid will on 18th January 2008. The executors named in the will, Teddy Brown Ayodi and Joanne Gimase Ayodi, petitioned for a grant of probate of the will of the deceased, but the court registry, for unknown reasons, caused the *Kenya Gazette* to publish that the deceased had died intestate, and a grant of letters of administration intestate was made to the two executors on that basis.
2. When the matter came up for hearing of the summons filed by the executors, dated 25th February 2021, for confirmation of their grant, on 17th May 2021, it came to my notice that the court had processed a grant in intestacy rather than a grant of probate of the written will that the executors had presented to the court. I directed that the grant of letters of administration intestate made to them on 22nd July 2020, and issued on 30th July 2020, be cancelled, and a grant of probate of the will of the deceased be issued to them instead.
3. In addition, I reserved the matter for ruling, to enable me go through the record with a view to ascertain whether the grant of probate made on 17th May 2021 could be confirmed based on the summons dated 23th February 2021.
4. Since the deceased died testate, distribution of his estate ought to be as per the terms of his will. I have looked at the proposals made in the summons of 25th February 2021, the same were of course based on grant in intestacy, but it conforms with the terms of the will of 18th January 2008. I have seen the consents executed by the beneficiaries, and I note that 3 of the beneficiaries attended court at the confirmation hearing.
5. The order that commends itself to me, to make in the circumstances, is that the grant of probate, that I made to the executors herein on 17th May 2021, is hereby confirmed. The estate of the deceased shall be distributed as per the terms of his will, made on 18th January 2008. A certificate of confirmation of grant shall issue to the executors in those terms.
6. It is so ordered.

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

W. MUSYOKA

JUDGE