



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO. 80 OF 2011

IN THE MATTER OF THE ESTATE OF HARUN KARUGU KAMAU (DECEASED)

MARY MUTHONI KAMAU.....PETITIONER

RULING

1. This a ruling on application dated 23rd October 2020, seeking the following orders:

a. That the firm of M/S Geoffrey Otieno & Company Advocates be granted leave to come on record for the petitioner in place of J. MALUKI & COMPANY.

b. That this Honourable Court be pleased to reinstate the Grant of letters of administration intestate issued to MARY MUTHONI KAMAU on 23rd May 2011 and revoked on 5th October 2016.

2. The petitioner filed this petition in respect to the estate of the late **Harun Karugu Kamau** who died on 24th December 2008. She sought grant of letters of administration intestate being the widow of the deceased and stated that the deceased was survived by herself and her seven children.

3. A temporary grant was issued on 23rd May 2011;the same was revoked on 5th October 2016 due to the absence of counsel.

4. The grounds on the face of the application are that, the grant of letters of administration intestate was issued to **Mary Muthoni Kamau** by this Court on 23rd May 2011 but the grant was revoked on 5th October 2016, due to non-attendance by counsel on record then. The petitioner argued that nonattendance by counsel should not be revisited on the her and urged this Court to reinstated the grant to enable her apply for a confirmed grant.

ANALYSIS AND DETERMINATION

5. I have considered the averments by the petitioner. Section 76 (d) (i) of the Law of Succession Act provide as follows: -

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

(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow;”

6. From the above legal provision, the Court is empowered to revoke a grant for want of prosecution if the petitioner fails to seek confirmation of grant within one year from the date of grant of letters of administration.

7. The petition for grant of letters of administration intestate was filed on 24th December 2008; a grant of letters of administration intestate was issued on 23rd May 2011 to the petitioner; the grant was therefore due for confirmation anytime from 24th November 2011 but petitioner did not take steps to apply for confirmation of grant until 5th October 2016 when the grant was revoked. Reason for the delay as captured above was failure on part of counsel.

8. I however believe that suits belong to parties and they have a duty of following up to know their position. On the other hand, counsel is expected to advice their clients accordingly. It is the lawyer who know timelines for taking particular steps in suits before Court.

9. Whereas I am of the view that sufficient reason for delay has not been advanced, I take note of the nature of the matter herein and I am

persuaded to invoke **Section 47** of the **Law of Succession Act** and **Rule 73** of the **Probate and Administration Rules** to allow reinstatement of this petition for ends of justice to be met.

10. FINAL ORDERS

- 1) **The firm of M/S Geoffrey Otieno & Company Advocates is hereby granted leave to come on record for the petitioner in place of J. MALUKI & COMPANY.**
- 2) **The orders of 5th October 2016 rooking letters of Grant are hereby set aside.**
- 3) **This succession cause be and is hereby reinstated.**
- 4) **The petitioner to file summons for Confirmation of Grant within 21 days from today's date.**
- 5) **Costs in the cause.**

RULING DATED, SIGNED AND DELIVERED VIA ZOOM AT NAKURU THIS 14TH DAY OF OCTOBER 2021

.....

RACHEL NGETICH

JUDGE

In the presence of:

Jeniffer - Court Assistant

Ms. Chepnetich for Petitioner