



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**SUCCESSION CAUSE NO. 76 OF 2017**

**(FORMERLY SUCCESSION CAUSE NO. 91 OF 2009 NRB)**

**IN THE MATTER OF THE ESTATE OF STEPHEN MBURU WANGONDU (DECEASED)**

**RULING**

1. *Justice W. Musyoka* delivered judgment in this matter on 5<sup>th</sup> May, 2017. By that judgment the learned judge appointed the following as administrators of the deceased's estate:-

- a. Grace Wangari Mburu;
- b. Robinson Waweru Mburu;
- c. John Githegi Nyokabi; and
- d. Mary Nduta Mwaura

2. The learned judge also determined the distribution of the property of the deceased's estate that is **MUGUGA/JETSCHHEME/649**.

3. Before me is summons dated 14<sup>th</sup> November, 2019. By that summons it is sought that the name of **Robinson Waweru Mburu** be removed because he passed away on 13<sup>th</sup> June, 2019. The application also seeks that the share of the estate property that was earmarked to be distributed to **Robinson Waweru Mburu** deceased be registered in the name of **Grace Wanjiku Waweru** to hold in trust of beneficiaries of **Robinson Waweru Mburu** deceased.

4. The application is opposed by **Grace Wanjiku Waweru**, the widow of **Robinson Waweru Mburu** deceased. Grace's opposition is based on the fact that she intends to seek leave of the Court of Appeal to appeal the judgment of Musyoka, J. of 5<sup>th</sup> May, 2017, and it is also opposed because the beneficiaries of her late husband are all adults and that there is no reason for her to hold property in trust for them.

5. Application is based on the provisions of **Section 81** of the Law of Succession Act Cap 160 which provides:-

**“Powers and duties of personal representatives to vest in survivor on death of one of them**

**Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them: Provided that, where there has been a grant of letters of administration which involve any continuing trust, a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of the trust until the court has made a further grant to one or more persons jointly with him.”**

6. The objection raised to the application, is on the ground that the pending application before the Court of appeal for enlargement of time to file an appeal is ineffectual because the application is by **ROBINSON WAWERU MBURU**, deceased and there is no evidence that any party has sought to substitute the deceased.

7. Further, the objection on the ground the beneficiaries of **ROBINSON WAWERU MBURU**, deceased are adults cannot be a basis to decline to grant the orders sought because a trust can be dissolved at any stage.

I am persuaded by the holding in the case ***In re ESTATE OF THE LATE ... HAVATON KAVAVA MAINGI [2019] eKLR:-***

**“8. In determining who should be appointed administrators to replace the dead ones, I should be guided by section 66 of the Law of Succession Act, which provides as follows: –**

**‘When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference**

**a. Surviving spouse or spouses, with or without association of other beneficiaries;**

**b. Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided in Part V;**

**c. The Public Trustee; and**

**d. Creditors.’”**

8. Accordingly, bearing the above holding in mind I do find merit in the application.

#### **DISPOSITION**

9. I grant the following orders:-

a. The grant of letters of administration intestate issued on 3<sup>rd</sup> May, 2017 be and is hereby rectified by removal of the name of **ROBINSON WAWERU MBURU** deceased as one of the administrators.

b. The certificate of confirmation of Grant dated 3<sup>rd</sup> May, 2017 be rectified as prayed in prayer 2 of the summons dated 14<sup>th</sup> November, 2019.

c. There shall be no orders as to costs to the summons dated 14<sup>th</sup> November, 2019.

**RULING DATED AND DELIVERED AT KIAMBU THIS 5<sup>TH</sup> DAY OF OCTOBER, 2021**

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant : Ndege

For Grace Wanjiku Waweru : Mr. Ngigi

For Mary Nduta Mwaura : Mr. Ngigi

For objector: Mr. Nyakeri holding brief for Mr. Njuguna.

**COURT**

Ruling delivered virtually.

**MARY KASANGO**

**JUDGE**