



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

SUCCESSION CAUSE NO. 499 OF 2009

IN THE MATTER OF THE ESTATE OF SHADRACK GITHINJI NJARUIRI (DECEASED)

1) DAMARIS CIUKUTHI GITHINJI

2) ROBERT NGARI Administrator of the Estate of JOYCE KANINI SHADRACK

3) JACOB SHADRACK GITHINJI.....ADMINISTRATORS

VERSUS

PURITY MICHERE GITHINJI.....PROTESTOR

RULING

1. Before me is an application dated 11.12.2019 filed by the applicant herein and wherein she seeks the following orders;-

(i) That this Honourable Court be pleased to order the Executive Officer of this court to sign all the relevant documents to facilitate the registration of the grant herein and the Land Registrar be directed to dispense with the requirement of the respondent's and other beneficiaries documents and the original title deeds while registering the grant herein.

(ii) That cost of this application be provided for.

2. The application is premised on the grounds on its face and on the affidavit sworn by the applicant who is the daughter of the deceased herein. The applicant's case is that an amended grant of letters of administration intestate made to the respondents and thereafter confirmed on 09.12.2019, be signed by the Executive Officer of the court for the reason that the applicant is apprehensive that the respondents will sideline her in the process of distribution of the estate.

3. In a nutshell, the respondents made a replying affidavit averring that the applicant had no locus to make any application in relation to the estate of the deceased herein nor that of Joyce Kanini Shadrack since she is not an administrator of either of the estates and further, she can never claim of being sidelined yet, as a family (the applicant being present) and before a mediator, all parties agreed on how to distribute the estate of the deceased.

4. The parties took directions to have the matter proceed by way of written submissions.

5. The respondents submitted that the application has been overtaken by events as the estate of the deceased has since been distributed. The respondents further submitted that the surveyor has since concluded his work and the beneficiaries have already received their titles and so, the court is *functus officio*. They further submitted that litigation should come to an end.

6. I have considered the application herein together with the respondents' replying affidavits on record. I have equally considered the respondents' submissions given that the applicant failed to file any. The main issue for determination is whether the application in question is merited.

7. Since the respondents have raised the issue of the applicant lacking locus to bring the application before this court, it is of great importance to determine the issue first.

8. The history of the estate before this court is that one Shadrack Githinji Njaruiru (Deceased) was married to Damaris Ciukuthi Githinji and Joyce Kanini. Upon the death of the deceased herein, certificate of grant of representation to his estate was issued to Damaris Ciukuthi, Joyce

Kanini Shadrack and Jacob Githinji Shadrack on 30.05.2013. It is not in dispute that thereafter, the said Joyce Kanini (2nd administrator) passed on before the estate of the deceased could be distributed.

9. It is of importance to note that only one administrator passed on while the other two are still alive. Under **Section 81** of the Law of succession Act, in the event of the death of one or more of joint administrators, where there are several administrators, the surviving administrator or administrators would then have the mandate to continue with their duties to completion without the need to replace the deceased ones. That Section states thus:

“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 executor or administrators shall become vested in the survivors or survivor of them...”

10. In the same line of thought, Musyoka J. held as follows in **Re Estate of George Ragui Karanja (Deceased) [2016] eKLR** that :

The Law of Succession Act does not expressly provide for substitution of personal representatives who die in office, particularly in cases where the estate is left without one. The closest provision is section 81 of the Act, which provides for vesting of the powers and duties of personal representatives in the survivor or survivors of a dead personal representative...

11. Given that it's the 2nd administrator who died, the other two administrators thus can still proceed to distribute the estate. In the case of **Florence Okutu Nandwa & Another v John Atemba Kojwa, Kisumu Civil Appeal No. 306 of 1998**, the Court of Appeal made it clear that:

“A grant of representation is made in personam. It is specific to the person appointed. It is not transferable to another person. It cannot therefore be transferred from one person to another. The issue of substitution of an administrator with another person should not arise.”

12. As such, I agree with the respondents that there cannot be a substitution of the dead administrator (Joyce Kanini) by her daughter in the manner proposed by the applicant.

13. I say so because the other administrators are still alive and thus should carry out the process of the distribution of the deceased's estate.

14. It is of importance to note that the Law of Succession Act is a self regulating Act which proceeds to place an obligation on an administrator to account upon completion of the administration. To this end, the applicant's fear should be allayed by the provision of **Section 83(i)** which is explicit that, an administrator has the duty to:

“...complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.”

15. In the premises, I find that:

(i) The application is bereft of any merit and it is hereby dismissed.

(ii) I make no orders as to the costs.

16. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 15TH DAY OF DECEMBER, 2021.

L. NJUGUNA

JUDGE

.....for the Administrators

.....for the Protestor