



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

SUCCESSION CAUSE NO. 171 OF 2016 [P&A]

CORAM: HON. R.E. ABURILL J

IN THE MATTER OF THE ESTATE OF WILSON AIRO ALOO....DECEASED

AND

IN THE MATTER OF AN APPLICATION

BY ANNA APONDI & JOSEPH AIRO ONYANGO.....CITORS

AND

LUCIA AUMA AIRO.....CITEE

RULING

1. This matter was due for mention to confirm filing of an application for substitution of the deceased Petitioner. I observe that no such application has been filed despite the court granting those who are interested in pursuing the estate of the deceased more extended period of time to do so.

2. The Estate herein belonging to the deceased has not been fully administered and it is dangerous to have a petition pending in court without a Petitioner or administrator legally appointed by the court through substitution; the original petitioner having died.

3. For the above reason, and as Section 47 of the Law of Succession Act gives this court inherent powers to determine any dispute under the Act and pronounce such decrees and make such orders as may be just and expedient; further, invoking the provisions of Rule 73 of the Probate and Administration Rules which provides:

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice to prevent abuse of the process of the court.”

4. This court is empowered to substitute a deceased administrator even when such administrator is alive.

5. In the instant case, a grant was issued on 11.8.2015 to Lucia Auma Ayiro and summons for revocation of the said grant were filed seeking to revoke the said grant which was confirmed on 7.10.2015. It is only an administrator who can account for the estate of the deceased person.

6. In the absence of an administrator, any other person can easily take advantage of the confirmed grant and meddle with the estate which is still being administered and with pending unresolved summons for revocation of the same.

7. In the light of the above, I find it appropriate at this stage to invoke inherent powers of the court and revoke or annul the grant issued to the now deceased Petitioner Lucia Auma Ayiro on 11.8.2015 and confirmed on 7.10.2015.

8. Persons who have interest in the estate of the deceased shall now file fresh petition for grant of letters of Administration of the estate of the deceased Wilson Ayiro Aloo who died on 16th November 2011 at Ndere for consideration by the court.

9. File closed.

10. Orders accordingly.

Dated, signed and delivered at Siaya this 11th day of May, 2020

R.E. ABURILI

JUDGE