



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
SUCCESSION CAUSE NUMBER 41 OF 1996
IN THE MATTER OF THE ESTATE OF THE LATE
MARIA GATHONI MACHARIA (DECEASED)
RULING

1. The summons before Court is dated 28th September, 2018. Vide this application three (3) of the administrators (applicants) seek orders;
 1. **THAT** JOSEPH NDIRANGU be removed as an administrator for the estate of MARIA GATHONI MACHARIA (DECEASED) and the Grant herein be amended accordingly.
 2. **THAT** the names in the Certificate of Confirmation of Grant herein be amended as follows;
 - a) “John Mathee” to read “John Muthee”
 - b) “Magdalene Wangeci Nyagah” to read “Magdaline Wangechi Nyagah”
 - c) “Teresiah Wamahiga” to read “Teresa Wamahiga Kingori”
 - d) “Jackson Mwangi” to read “Jackson Mwangi Ndirangu”
 - e) “Joseph Ndirangu” to read “Joseph Ndirangu Gitonga”
 3. **THAT** the beneficiary by the name of Mburunje Ndirangu, who is now deceased, be substituted with his wife Priscilla Mumbi Burunji.
 4. **THAT** the beneficiary by the name Ndirangu Kimondo, who is now deceased, be substituted with his wife Jane Nyambura Ndirangu.
 5. **THAT** costs of this application be in the cause.
2. The application is grounded upon the joint affidavit of Magdaline Wangechi Nyagah, Teresa Wamahiga King’ori and Jackson Mwangi Ndirangu.
3. It is the case of the three (3) administrators that for the last twelve (12) years they have been unable to give effect to the confirmed grant by way of transmission of the respective properties to the entitled beneficiaries as the 4th administrator, Joseph Ndirangu, has been very unco-operative and he has refused and/or neglected to discharge his duties as an administrator.
4. The 4th administrator is accused of failing to attend meetings called, has refused to sign mutation forms and has incessantly maintained that the entire property is his alone.
5. It is also urged that two (2) beneficiaries are deceased and it has been agreed that their widows be substituted in their place.
6. The administrators aver that some of the names of the beneficiaries are misspelt and it is sought that the same be rectified.
7. Attached to the application is a consent signed by all the beneficiaries.

8. The 4th administrator opposes the application and has filed a replying affidavit.
9. He avers that the deceased Maria Gathoni Macharia was his grandmother and was very close to him. He asserts that his intended removal as an administrator is to pave way for the other administrators to implement their malicious actions contrary to the wishes of the deceased.
10. He asserts that he refused to sign some documents which were drafted in bad faith and contrary to the wishes of the deceased.
11. He challenges the certificate of confirmation of grant as illegal since it was issued without his knowledge or presence. The property has been allocated to persons who were not beneficiaries of the deceased.
12. He exhibits a letter in which the deceased purportedly decreed that the 1st administrator and her children should never set foot on her land.
13. He at paragraph 11 of his affidavit makes proposals of how the land should be distributed.
14. He adds that one Teresia Wamahiga withdrew moneys amounting to Kshs. 360,000/= from the deceased account in 1998. She is now helping other administrators so that she does not account for that money.
15. I have considered the application, the supporting affidavit and the response to the application as gleaned from the replying affidavit.
16. Of determination is whether the court should allow the prayers sought.
17. To begin with, the grant of letters of administration intestate in respect of the estate of the deceased has already been confirmed and a certificate issued showing in the schedule thereon the mode of distribution.
18. The orders of court as contained in the certificate of confirmed grant have not been varied and/or set aside through any legally recognized process.
19. As it is, those orders remain valid orders of court.
20. Upon considering the applicants prayers and supporting evidence, it is clear that their sole intention is to give effect to the orders of court. That is as it should be noting that they are administrators of the estate and they are bound by law to wind up the estate herein.
21. The respondent opposes the application. The mainstay of the objection is that the confirmed grant was irregular as it was made in his absence. He asserts that the confirmed grant is against the wishes of the deceased and he accuses the other administrators of ill motives.
22. The fact of the matter is that these protestations by the respondent are overtaken by events. He did not appeal against the existing orders of court. Neither did he seek revocation of grant.
23. A reading of his replying affidavit clearly exhibits immense ignorance of the law applicable and it is manifest that he did not benefit from suitable legal advice.
24. With the result that I am satisfied the application before court is meritable.
25. I allow the summons dated 28th September, 2018 in terms of prayer 1, 2, 3 and 4 and make the following orders;

- 1. Joseph Ndirangu be and is hereby removed as an administrator of the estate of Maria Gathoni Macharia.**
- 2. The certificate of confirmation of grant issued to the four (4) administrators is amended to reflect the removal of the name of Joseph Ndirangu as an administrator.**
- 3. The certificate of confirmation of grant be amended to correct the errors shown at prayer 2 of the summons.**
- 4. The beneficiary Ndirangu Kimondo (deceased) be substituted with his wife Jane Nyambura Ndirangu.**
- 5. The beneficiary Mburunje Ndirangu (deceased) be substituted with his wife Priscilla Mumbi Burunji.**
- 6. Each party to bear its own costs.**

Dated and Delivered at Nakuru this 18th day of January, 2019.

A. K. NDUNG'U

JUDGE