



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 314 OF 2014

IN THE MATTER OF THE ESTATE OF ZEPHANIA KARITI M'THARA (DECEASED)

JUSTIN NJERU ZAPHANIA.....PETITIONER/APPLICANT

VERSUS

ELIZABETH KARUMA KARITI.....PROTESTOR/RESPONDENT

R U L I N G

1. The grant in this case issued in favour of one Justin Njeru Zephania and confirmed on 3/04/1996 and which was subsequently rectified on 11/02/1998 was revoked in the ruling of this court by Bwonwonga, J. delivered on 7/06/2016.
2. Thereafter, the former administrator filed an application for confirmation of grant dated 8/07/2016 seeking for distribution of the deceased's estate almost equally between the two house of the deceased.
3. The surviving widow of the deceased filed a protest against confirmation dated 15/08/2016 proposing and distributing the assets to herself and some daughters jointly while the sons of both houses were given separate shares.
4. The history of this case as borne by the record is that some parcels of land have been left out in the distribution from time to time. The former administrator had left out L.R. Kyeni/ Karurumo/32, Kyeni/Karurumo/33, Kyeni/Kigumo/1775 and Kyeni/Kigumo/2141. Later on he brought on board through rectification of grant LR. Kyeni/ Karurumo/32 and 33 leaving out LR. Kyeni/ Kigumo/1775.
5. I note that both parties have now included in their affidavits all the parcels of land save for LR. Kyeni/Kigumo/2141. The omission of one parcel of land will cause a lot of confusion and conflict in this cause and it may generate numerous applications followed by protests.
6. It is in the interests of justice that all the assets of the deceased be brought on board so that the court determines this cause once and for all. This is an old case which was filed in the Principal Magistrate's court in 1998 and later moved to the High Court and given a new file number Succession Cause No. 314 of 2014. The High Court has only dealt with the summons for revocation of grant since the case was registered herein four (4) years ago.
7. The confirmation of grant was filed by Justin Njeru Zephania, without an administrator following the revocation of the grant and there is still no administrator. I have perused the ruling of Bwonwonga, J. dated 7/06/2016 and I note that the court revoked the grant but did not appoint an administrator. It follows that Justin Njeru Zephania had no authority to file the application for confirmation of grant dated 8/07/2016 which is the preserve of the administrator of the estate.
8. In the absence of an administrator this cause cannot move another step. It is therefore in the interest of justice that an administrator(s) be appointed. From the evidence adduced in this cause, the deceased had two wives with several children who are the heirs of the estate unless the contrary is proved.
9. One of the widows Elizabeth Karuma Kariti is alive and an active party in this cause. The former administrator is a son of the deceased by his first wife, the late Esther Nduma.
10. The two houses seem to disagree on distribution of the estate. It is therefore important to have each house represented in the administration of the estate.
11. The brief background facts and the evidence adduced by the parties in this cause on the summons for revocation of grant and on other issues are of great assistance in this court in determining the pending issues on administration of the estate and give directions on the way

forward.

12. I therefore give the following orders: -

- 1) That Elizabeth Karuma Zephania and Justin Njeru Zephania are hereby appointed co-administrators of the estate of the deceased herein.*
- 2) That all the assets of the deceased be brought on board for distribution including LR. Kyeni/Kigumo/2141.*
- 3) That either of the administrators or both of them jointly file an application for confirmation of grant within thirty (30) days from the date of this ruling.*
- 4) An any of the administrator who is not in agreement with the mode of distribution of the co-administrator to file his/her affidavit of protest within 21 days upon service of the application for confirmation.*
- 5) That each party to meet their own costs.*

13. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 16TH DAY OF JANUARY, 2019.

F. MUCHEMI

JUDGE

in the presence of: -

Both parties present