



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NUMBER 193 OF 2005

IN THE ESTATE OF LIVINGSTONE MUTHAKA NGAHU (DECEASED)

RULING

1. The Application before court is dated 30/5/2017. The prayers sought are;

1. This application be certified urgent for the reasons or urgency set out in the certificate of urgency.

2. That the Honourable Court be pleased to order the administrator Isabella Nyambura Muthaka be replaced and substituted with Mercy Wangari Muthaka.

3. The costs of this application be awarded to the plaintiff/applicant.

2. The application is premised on six (6) grounds as seen on the face thereof and on the affidavit of John Kiiru Muthaka.

3. The gist of the application, the grounds and affidavit evidence is that Isabella Nyambura Muthaka and John Kiiru Muthaka were appointed joint administrators of the estate of Livingstone Muthaka Ngahu (deceased) on 16/3/2007.

4. Isabella Nyambura Muthaka has since become uncooperative stalling the administration of the estate.

5. It is urged that property known as Title Number Subukia/Subukia Block 6/325 (Ngumba) which was deposited as security for a medical bill in respect of treatment of one David Maina Muthaka, a beneficiary (now deceased) is at risk of being sold. Isabella has failed to co-operate in taking steps to salvage this property.

6. The application is not opposed and evidence of proper service on Isabella Nyambura Muthaka is on record.

7. I have considered the application at hand. On the material before court it is manifestly clear that Isabella Nyambura has failed in her duties as a co-administrator of the estate herein.

8. The allegations raised against her are not controverted. I hold them as true.

9. That being so, the said Isabella is thus a stumbling block to the administration of the estate herein. The cause was lodged in court in 2005. This is over a decade ago. The need to have it finalized cannot be gainsaid.

10. Isabella has failed to proceed diligently with the administration of the estate as required of her by **Section 76 (d) of the Law of Succession Act (Cap 160 Laws of Kenya)** and totally failed to execute her mandate and duties within the meaning of **Section 83 of the Law of Succession Act.**

11. It is in the interest of the estate herein and the beneficiaries that the grant issued to Isabella Nyambura Muthaka be revoked and in place thereof a grant do issue in the joint names of John Kiiru Muthaka and Mercy Wangari Muthaka. The same is hereby confirmed and distribution maintained as per the certificate of grant dated 16/3/2007.

12. The administrators to wind up the estate within six (6) months hereof and make a formal report to court.

13. Each party to bear its own costs.

Dated and Signed at Nakuru this 6th day of February, 2019.

A. K. NDUNG'U

JUDGE