



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION NO. 34 OF 2017

IN THE ESTATE OF MUROKO KIMITU Alias DOUGLAS MUROKO KIMITO (DCD)

NICORETA WANJIRU MURAGE..... PETITIONER

V E R S U S

AULERIA NJOKI MUROKO.....OBJECTOR

RULING

1. The applicant has filed an application dated 01/08/2017 seeking the following;

a) The Court to set aside the Judgment entered on 25/06/2015 pending hearing and determination of the application.

b) The Court be pleased to reinstate the grant of letters of administration revoked on 25/06/2015.

c) The Court be pleased to substitute the deceased petitioner Josphine Ikuu Muroko Alais Ikuu Muroko with the applicant Nicoreta Wanjiru Murage and a fresh grant be issued to the applicant.

2. Upon perusal of the proceedings, the Court ordered as follows;

On 25/06/2015 - *“Pursuant to Notice dated.....the interim grant herein is revoked.”*

On 18/12/2017 - *“The orders made by this Honourable Court on 25/06/2015 are hereby vacated.”*

3. From the reading of the above orders, it is clear that the order revoking the grant was vacated and what is now pending is substitution of the deceased applicant.

Applicant’s case

The applicant states that she is a daughter of the deceased and the deceased petitioner. That she applied for Limited Grant Ad Litem of the estate of the deceased petitioner and is desirous of seeing the matter to conclusion.

Respondent’s case

In response, the respondent stated that the deceased had two wives, the first wife was known as Njeu Muroko while the 2nd wife is the deceased petitioner. That she is the daughter of the 1st wife while the applicant is the daughter of the 2nd wife and she proposes that they be joint administrators.

Substitution

On the issue of substitution of the petitioner I am guided by decisions of the High Court & Court of Appeal.

In **John Karumwa Maina v Susan Wanjiru Mwangi [2015] eKLR**

The Court held;

In the case of FLORENCE OKUTU NANDWA AND ANOTHER VS JOHN ATEMBA KOJWA, Court of Appeal Civil Appeal in

Civil Appeal No. 306 of 1998 at Kisumu where it was held that a court should not issue a grant to a person who has not sought for it. The judge stated as follows:-

“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. Where the holder of a grant dies, the grant made to him becomes useless and inoperative, and the grant exists for the purpose only of being revoked. Such grant is revocable under section 76 of the Law of Succession Act. Upon its revocation, a fresh application for grant should be made in the usual way, following procedures laid down in the Law of Succession Act and the Probate and Administration (Rules). I agree with the respondent that there cannot be a substitution of the dead administrator by his wife in the manner proposed by the applicant.”

Further in **Julia Mutune M'mboroki v John Mugambi M'mboroki & 3 others [2016] eKLR**

The Court held;

There is absolutely no room of substitution of the deceased administrator under the Law of Succession Act. In my view, therefore, where the sole administrator is a natural person, and he or she dies, the grant becomes useless or inoperative by reason of subsequent event of his demise.....

Accordingly, in such case, the proper procedure is to apply for revocation of grant of letters of administration under section 76(e) of the Law of Succession Act on the reason that the grant has become useless and inoperative through subsequent circumstances and a grant to be made to another person named in the application.

4. The decision by the Court of Appeal is binding on this Court. There can be no substitution of an Administration by way of filing an application for substitution. For one to be appointed an administrator, he must follow the process under the **Law of Succession Act** and the **Probate and Administration Rules**. Short of that an administrator coming on record through an application for substitution will not be properly on record and grant issued would easily revoked as the proceedings to obtain it were defective in substance.

5. The application to substitute the petitioner is not properly before the court and is dismissed.

6. What the applicant should do is to apply for revocation of grant and start the process of administration of the estate of the deceased all over again. The application dated 1/8/17 is without merits and is dismissed.

I make no orders as to the costs.

Dated at Kerugoya this 6th day of March 2019.

L. W. GITARI

JUDGE

6/3/19