



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.611 OF 1995

IN THE MATTER OF THE ESTATE OF KIBUI KANG'ARI - DECEASED

ALICE NYAKARURA

KIBUE, VERONICAH NJERI KIBUE

PAUL NJUNGE KIBUE.....ADMINISTRATORS

RULING

1. The Application coming for consideration is the one dated 20.7.2017 seeking the following orders:

(i) SPENT

(ii) THAT the grant issued to the previous Administrator (CHRISTOPHER RURINGE KIBUE) be amended to enable the current Administrators of the Estate of Kibui kangari (Deceased) be amended and replaced with the current Administrators namely ALICE NYAKARURA KIBUE, VERONICAH NJERI KIBUE and PAUL NJUNGE KIBUE as per this Court's Ruling of 23rd September 2016.

(iii) THAT the title deed number DAGORETTI/WAITHAKA/T.96 and DAGORETTI/WAITHAKA 154 be cancelled.

(iv) THAT Costs of this Application be in the Cause.

2. The Application was considered in the Ruling dated 5.10.2018 and the Court directed that the administrators file Affidavits in reply to the Application and to depose the matters of fact mentioned in the written submissions on the deaths of some of the beneficiaries and administrators supported by appropriate documents.

3. The Application is not opposed by VERONICAH KABUE and PAUL KABUE save that MARGARET WAMBUI (Deceased) should not be included as a beneficiary because she did not survive the late KABUE KANGARI (DECEASED) who died on 4.5.1992 whereas MARGARET WAMBUI (Deceased) died in 1987.

4. The application was however opposed by the former administrator, CHRISTOPHER RURINGE KIBUE who relied on an affidavit dated 29.11.2017 and filed a further Replying Affidavit sworn on 26.2.2019.

5. VERONICAH NJERI KIBUE also filed an affidavit dated 26th October, 2018 in which she deposed that three beneficiaries have died since the Court made orders on 17.6.1997 namely:

a) ALICE NJERI RURINGE died in 2009 aged 55 years.

b) JANE NGANGA KIBUE died in 2010 aged 62 years old

c) HANNAH WAIRIMU KIBUE died in 2014 aged 84 years old

6. The Affidavit of VERONICAH NJERI KIBUE did not annex the death certificates of the said beneficiaries but stated that she was unable to obtain the same from their next of kin.

7. She proposed that the Letters of Administration granted to Christopher Ruringe Kibue be revoked as ordered by the Court in its Ruling dated 23.9.2016 and that the three administrators appointed by the Court namely ALICE NYAKARURA KIBUE, VERONICAH NJERI

KIBUE and PAUL NJUNGE KIBUE to hold the shares of the deceased beneficiaries until the next of kin process the Letters of Administration.

8. Justice W. Musyoka, in discussing a similar issue *In the matter of the estate of Edward Kanyiri Kunyiha (Deceased)* had this to say:-

"Regarding the death of the co-administrator, the position is that the grant...has become inoperative. The grant was made jointly to the applicant and his mother, who has now died. It was intended that the two act together in the administration of the estate. A grant is a certificate. It is issued to a particular person or persons. If the holder of the grant dies the grant becomes useless, as it cannot be transferred to another person. If it was made to two persons and one dies it becomes inoperative. Under section 76 of the Law of Succession Act such grant is liable to revocation. It should be revoked and another grant made."

9. A similar opinion was expressed by the same judge in *the Estate of Simon Ngugi Nganga (Deceased)*

"The matter of the death of a co-administrator cannot be dealt with as a rectification or review of the certificate of confirmation of grant. It is more fundamental. It touches on appointment of administrators. The grant.....was made to two persons. It is expected that the two are to act jointly at all times with respect to the administration of the estate. With the death of one of them, the grant becomes useless as the surviving sole administrator cannot act on the basis of a grant which still bears the name of a dead administrator. Since the grant has become useless and inoperative, it ought to be revoked and fresh appointments of administrators be made. The surviving administrators cannot even use the grant, as it is useless, to seek the orders that the applicant now seeks in this application."

10. In the case of *Re the Estate of TNN (deceased) [2014] EKLK* where it was held that a trustee stands in fiduciary position with regard to trust property and the beneficiaries. He holds the property for the benefit of the beneficiaries rather than for his own benefit. He should not act in a manner, which prejudices the interest of the beneficiaries. This is therefore the position that that the Administrators will hold.

11. I have considered the Submissions filed by the parties in the application dated 20.7.2017. I find that the 1st prayer is not opposed and I accordingly direct that the grant issued to CHRISTOPHER RURINGE KIBUE be and is hereby revoked and a fresh one issued to ALICE NYAKARURA KIBUE, VERONICAH NJERI KIBUE and PAUL NJUNGE KIBUE.

12. However, before rectification of the Certificate of Confirmation, the Administrators to comply with ruling delivered on 5.10.2018 and specifically to avail the death certificates of the deceased beneficiaries and administrators and also all the parties to agree on the mode of distribution and to appear in Court for rectification of the Certificate of Confirmation.

13. Mention within 30 days of this date for compliance.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 5th DAY OF APRIL, 2019

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI