



REPUBLIC OF KENYA

IN THE HIGH COURT AT EMBU

SUCCESSION CAUSE NO. 1053 OF 2002

IN THE MATTER OF THE ESTATE OF

CHARLES NJERU MURUATETU (DECEASED)

BERNARD MURATHI CHARLES

LUCY GATUKI NJERU.....PETITIONERS

VERSUS

BETH KARIMI KIVUTI.....APPLICANT

R U L I N G

A. Introduction

1. This ruling is in regard to the summons dated 12th October 2017 seeking for orders of substitution of the applicant of the late David Kivuti Charles, a deceased beneficiary. It also seeks for issue of an amended grant to include the name of the applicant in place of that of David Kivuti Charles.
2. The application further seeks for orders that the Deputy Registrar/Executive officer executes all the necessary documents to facilitate transmission of the deceased David Kivuti's shares to the applicant.
3. The petitioners' in response deposed that the applicant had already been issued with grant of letters of administration intestate on 20th September 2017 to the estate of David Kivuti and as such if the summons were allowed it would be prejudicial to the other beneficiaries of the estate of David Kivuti Charles.
4. The parties agreed to dispose of the summons by way of written submissions.

B. Applicant's Submissions

5. The applicant submitted that following the confirmation of grant issued on 18th January 2005 distributing the estate of Charles Njeru Muruatetu the deceased herein, David Kivuti Charles being one of the beneficiaries passed away before the properties to be inherited by him were transmitted. She further submitted that she had filed succession cause No. 59 of 2016 and was subsequently awarded letters of administration to the estate of David Kivuti Charles which have never been challenged or revoked and as such her application was merited.

C. Petitioners' Submissions

6. It was submitted that the applicant obtained the grant of letters of administration to the estate of the deceased fraudulently as she did not disclose to the court the existence of other beneficiaries and as such allowing her summons will prejudice the other beneficiaries to the estate of David Kivuti Charles who died intestate and was polygamous.

D. Analysis & Determination

7. The applicant herein is a widow to one of the beneficiaries in the confirmed grant dated 18th January 2005. The applicant successfully petitioned and was granted letters of administration to the estate of David Kivuti Charles in Succession Cause No. 59 of 2016. These letters have never been challenged with a view of being revoked by other parties declaring interest in the estate.
8. It is not in dispute that the property bequeathed to the beneficiaries of Charles Njeru Muruatetu the deceased in this cause include David

Kivuti Charles and that transmission to the beneficiaries is yet to take pace. It is against this backdrop that the applicant moves this court to grant her orders of substitution in her capacity as the widow of David Kivuti Charles, a beneficiary She proposes that her name substitutes that of David Kivuti Charles as a beneficiary.

9. The correct procedure the applicant ought to have initiated was to move court through the administrators for rectification of the grant. The provisions in **Section 74 of the Act** and **Rule 43 of the Probate and Administration Rules** are quite limiting and permit rectification of grants in two clearly defined cases: -

(a) errors in names and descriptions of persons or things;

(b) errors as to time or place of death of the deceased;

10. The application to substitute a beneficiary would not be covered by those provisions in my view.

11. I'm alive to provisions of rule 73 of the Probate and Administration Rules which provides that:

“73. Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

It must be noted that the object of the court is to uphold substantive justice.

12. I have perused the court record and note that there is an affidavit of protest annexed to the affidavit of one of the administrators. It was filed by one Hellen Gitiri Njeru and Loise Wanjiku Muriithi in Embu Succession No. 59 of 2015 who claim to be co-widows with the applicant by virtue of having been married to the deceased.

13. In their joint affidavit, it is deponed that the applicant has already filed a succession claim in this cause where their deceased husband David Kivuti Charles has shares as shown in the grant. The said protestors claim to be equally entitled to the estate of their late husband together with the applicant herein.

14. One Bernard Murathi one of the administrators and a brother to David Kivuti Charles in his further affidavit sworn on 25/02/2019 acknowledges the protesters as the widows of the late Charles David Kivuti Charles and in the same breath he acknowledges the applicant as the 3rd widow of David Kivuti Charles. He states that the applicant had filed Succession Cause No. 59 of 2016 in respect of the late David Kivuti Charles in exclusion of other widows and that she was issued with a grant. This file has been joined to these proceedings. Apart from the widows, it is stated that the children of David Kivuti are also beneficiaries to his estate.

15. In view of the above unresolved issues of who are the rightful beneficiaries of the estate of David Kivuti Charles, I find it inappropriate to consider this application. If the application is allowed, it would create further legal hurdles in this case and also in the succession proceedings for the late David Kivuti Charles.

16. It is in the interest of justice that those issues be resolved before the applicant or any other beneficiary is enjoined in this cause to step in the shoes of the deceased David Kivuti Charles. The family is at liberty to amicably resolve the issues to facilitate the determination of this cause without delay.

17. It is my finding that this application dated 12th October, 2017 has no merit and it is hereby dismissed.

18. There will be no order as to costs.

19. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 10TH DAY OF JULY 2019.

F. MUCHEMI

JUDGE

In the presence of: -

Beth Karimi Kivuti the Applicant

Bernard Murathi Charles the 1st Petitioner