

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 2099 OF 2007

IN THE MATTER OF THE ESTATE OF TITUS MUIRURI DOGE (DECEASED)

DANIEL NJENGA MUIRURI.....1ST APPLICANT

JOSEPH MWANIKI MUIRURI.....2ND APPLICANT

MOSES WAINAINA.....3RD APPLICANT

VERSUS

ESTHER NJERI MBURU.....1ST RESPONDENT

ANN WANGUI MUTHEE.....2ND RESPONDENT

RULING

1. The deceased Titus Muiruri Doge died intestate on 8th April 2006. The respondents Esther Njeri Mburu and Ann Wangui Muthee and the applicants Daniel Njenga Muiruri, Joseph Mwaniki Muiruri and Moses Wainaina are some of his children. The respondents petitioned this court on 13th August 2007 for the grant of letter of administration intestate. The grant was issued to them on 5th November 2007, and confirmed on 7th May 2013. The estate comprised six parcels of land, a vehicle and so on. When the confirmation of the grant was done on 7th May 2013 the respondents were present together with the 2nd and 3rd applicants.

2. It is admitted that subsequent to the confirmation of the grant, the applicants complained to the police that the affidavit in support of the petition that the respondents filed on 25th July 2007 had their purported signatures and yet they had not made the signatures; that they had not consented to the filing of the petition. Following the complaint, the respondents were arrested and charged, each with forgery under **section 349** of the **Penal Code**, at Thika Law Courts. The criminal case is partly heard.

3. It is on the basis of the criminal proceedings that on 13th June 2015 the applicants applied under **section 76** of the **Law of Succession Act (Cap. 160)** to have the grant issued to the respondents on 5th November 2007 and confirmed on 7th May 2013 revoked, or, in the alternative, the implementation of the certificate of confirmation stayed pending the outcome of the criminal proceedings.

4. The respondents opposed the application. Their case was that they committed no forgery, and that the criminal court has not adjudged them guilty. This is because the criminal proceedings were on-going, and there is a presumption of innocence in their favour.

5. As matters stand, the criminal charges facing the respondents amount to allegations only. They have yet to be proved. When proved, and it is shown that the respondents founded their petition for the grant of letters of administration intestate in respect of the estate of the deceased on forgery, the court will be minded to revoke the grant under **section 76(b)** of the **Act** on the basis of fraud. At this stage the grant cannot be revoked.

6. However, because there is a chance that the petition may have been fraudulently obtained, I hereby halt and suspend the further implementation and execution of the certificate of confirmation issued on 7th May 2013 until the criminal proceedings have been concluded.

7. At this stage, I make no order as to costs.

DATED and DELIVERED at NAIROBI this 5TH NOVEMBER 2019

A.O. MUCHELULE

JUDGE