



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 144 OF 2005

IN THE MATTER OF THE ESTATE OF MARIBE MWARIRI

(DECEASED)

CHARLES MWARIRI MARIBE.....PETITIONER/RESPONDENT

AND

VERONICA WAMBUI MWARIRI.....INTENDED SUBSTITUTED PARTY

RULING

The application before me is the chamber summons dated 16th March 2016 brought under section 3A and Order XXIII rules 1,3 and 4 of the Civil Procedure Act Cap 21 laws of Kenya.

It is supported by the affidavit of Veronica Wambui Mwariri sworn on the 16th March 2016, a certificate of urgency dated 30th October 2017, an affidavit in support of the certificate of urgency sworn on the same date, a copy of the certificate of death for Charles Mwariri Maribe, accompanied by a copy of the letter from the Chief Gatundu location confirming his death and the need for his substitution by his wife in these proceedings.

On the face of it the application is brought on the wrong provisions of the law as order XXIII of the CPR is not one of the provisions applicable to matters succession. This is the clear expression of rule 63 of the P&A rules which states at sub rule (1);

Save as is in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, namely Orders V, X, XI, XV, XVIII, XXV, XLIV and XLIX (Cap. 21, Sub. Leg.), together with the High Court (Practice and Procedure) Rules (Cap. 8, Sub. Leg.), shall apply so far as relevant to proceedings under these Rules.

The Law of succession act does not provide for the substitution of parties as is in the Civil Procedure Code.

The application seeks the orders;

1. That the court be pleased to substitute the applicant, who is the wife of the deceased, in place of the petitioner/administrator now deceased to enable her prosecute the confirmation of the grant as the law permits.
2. That the court be pleased to make any further orders as it may deem fit to meet the ends of justice
3. That the costs of the application be provided for.

The grounds for the application as set out on its face are *inter alia*; that the summons for confirmation of the grant is still pending hearing and determination.

A perusal of the court file reveals that the Certificate of Confirmation of grant was issued on the 6th November 2015 whereby the grant issued to Charles Mwariri Maribe was confirmed, and the estate of Maribe Mwariri, L.R IRIAINI/KIAGUTHU/167 measuring about 4.4 acres was distributed among his heirs

1. CHARLES MWARIRI MARIBE- 1.1 acres

2. JAMES MWARIRI MARIBE -1.0 acres

3. JOHN MIANO MARIBE- 1.0 acres

4. DEDAN MATHENGE MARIBE- 1.0 acres

5. ESTHER WAMBUI MARIBE- 0.3 acres

This was subsequent to the filing of the summons for confirmation of grant dated 2nd October 2006, and affidavit of protest by Esther Wambui Maribe dated 15th May 2007. These were compromised vide a consent filed on the 16th October 2014 and which settled the matter leading to the confirmation of the grant.

Clearly therefor there is no summons for confirmation that is pending hearing and determination before this court.

What the applicant is saying is that the death of the petitioner /administrator who was her husband, has left the administration of the estate incomplete. Section 76 of the Law of Succession takes care of this situation.

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

(a)

(b).....

(c).....

(d).....

(e) *that the grant has become useless and inoperative through subsequent circumstances.*

In this case the death of the administrator has rendered the grant useless as the administration of the estate cannot be completed and the estate cannot be transmitted to the beneficiaries as required. Hence the need for a new personal representative of the deceased who can carry out the remaining duty as required by s.83(i) of the Law of Succession Act;

Personal representatives shall have the following duties—

(i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.

This case therefor presents one of the situations where the court could revoke the grant, if only for the purposes of ensuring that the estate is transmitted to the beneficiaries.

I have perused the record. I have noted that from the letter of the chief, the deceased had two wives, or two houses. The administrator was from the 1st house. The way to go would be to have the grant revoked and a limited grant issued to another party or parties who would be able to complete the administration of the estate. The other beneficiaries would have to be involved. There is no evidence that the application was served on them so their input as to whether the applicant would be the proper person to complete the administration of the estate is not provided.

The orders herein cannot be granted in the manner in which they are sought. However, so as not to cause an unnecessary prolonging of the matters at hand, and having recognized what needs to be done; and that is, petitioner/administrator is dead, and the administration of the estate cannot be completed, I will proceed under rule 73 of the P&A rules and make the following orders;

1. The application be deemed to be filed under the proper provisions of the law.
2. The applicant to fix a hearing date in the registry and to serve the other beneficiaries to appear on the date for hearing of the application within 30 days hereof.
3. The beneficiaries are at liberty to file any replies to the application within 30 days of service.
4. The applicant to file a further affidavit setting out her children with the deceased and their respective ages.

No orders as to costs.

Dated, delivered and signed this 2nd day of February 2018 at Nyeri

Teresia M Matheka

Judge