



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1357 OF 1993

IN THE MATTER OF THE ESTATE OF JOEL RUKWARO THUKU (DECEASED)

RULING

1. A grant of letters of administration intestate in relation to the estate of Joel Rukwaro Thuku who died on 21/2/2003 was made and issued to Rhoda Rukwaro, Rebecca Waguthi Rukwaro and Hosea Kanyogoro Rukwaro as joint administrators on the 19th September 2011. The grant was subsequently confirmed on the 19th September 2011. Before completion of the administration of the estate, the three administrators died.

2. Vide a summons for substitution of administrator application dated 19th March 2018 pursuant to rule 49 of the P & A rules, one Monica Rukwaro a beneficiary (heir) of the estate moved to this court seeking to substitute the three deceased administrators as the sole administrator. Application is premised on grounds on the face of it and affidavit in support sworn on 19th March 2018 by the applicant in person

3. In support of her application she attached a copy of the grant, certificate of confirmation and death certificate indicating that Rhoda Wangari Rukwaro died on 21/1/2016, Rebecca Waguthi Rukwaro died on 11th August 2014 and Hosea Kanyogoro Rukwaro on 21st November 2017. She also attached consents from various surviving beneficiaries to signify that there is no objection from any quarters.

4. I have considered application herein, grounds on the face of it, affidavit in support and submission by learned counsel. According to the heading of the application, the same is purportedly brought under Section 49 of the Probate and Administration rules. I believe the provision is misquoted as being a section instead of rule 49. Be it as it may, I conclude that counsel meant rule 49 of the Probate and Administration rules which provides:

“A person desiring to make an application to the court relating to the estate of a deceased person for which no provision is made elsewhere in the rules shall file a summons supported if necessary by affidavit”.

5. The law regarding the status of a grant where deceased administrators or executors have died is well settled under Section 81 of the Law of Succession in case one or more of several executors or administrators dies. For clarity purposes, I wish to reproduce Section 81 which provides as follows:

“Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them”.

6. From the wording of this section, there is nothing like substitution unless there is a continuing trust and there is only one surviving executor or administrator in which case the court shall appoint additional executor or administrator. Section 81 refers to a situation where there are more than one executor or administrator. This provision is therefore not applicable as all the administrators have died.

7. What happens where a sole executor or administrator or where more than one, all have died? The law of succession does not provide for substitution of a single administrator or executor (see in the matter of the estate of **Mwangi Mugure alias Elieza Ngware (deceased)** and in the matter of the estate of **Mary Wairimu Ngware (deceased) Nairobi HCC Succession Cause No. 2018 of 2001.**

8. In such a scenario, Section 76 (e) of the Law of Succession comes to play on account that following the death of the sole administrator/executor or all administrators or executors, the grant becomes inoperative through subsequent circumstances. Subsequently, a limited grant of letters of administration de bonis non would then issue to any of the heirs or beneficiaries with the consent of the rest. In that regard I am guided by the reasoning in the case of **(In the matter of the estate of Hannah Njuki (deceased) Nairobi High Court Succession Cause No. 463 of 1997)** where Ang’awa J held that:

“where an administrator dies before completion of administration, the next cause of action should be to apply for a grant of letters of administration de bonis non, which is limited to the completion of the administration of the estate”.

An application of this nature ought to have been filed under Section 76 (e) of the Law of Succession and paragraph 16 of the 5th Schedule.

9. Although the application herein is not brought under the proper law or procedure, Article 159 (1) of the constitution in which courts are bound not to discharge justice based on undue circumstances comes to play. In any event Section 66 of the Law of Succession allows a court to appoint an administrator suo motto.

10. Accordingly, pursuant to Section 76 (e) & 66 of the Law of Succession and paragraph 6 of the 5th Schedule, the grant of letters of administration issued to the three administrators is hereby revoked and a grant of letters of administration de bonis non shall issue to the applicant herein Monica Rukwaro and the certificate of confirmation of grant of letters of administration shall issue in the name of the new administrator.

Order accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 16TH DAY OF MAY, 2018.

J.N. ONYIEGO (JUDGE)

In the presence of:

Counsel for the applicant

EdwinCourt Assistant