

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 325 OF 1984

IN THE MATTER OF THE ESTATE OF WAINAINA ICHARIA (DECEASED)

RULING

1. The deceased herein Wainaina Icharia died intestate on 27th October 1982. A grant of representation was taken out by Reuben Karongo Wainaina (a son) and Wambui Gikara (a daughter). A grant of letters of administration intestate was made and issued to the said petitioners on the 7th January 1988 and then confirmed on 28th June 2011. However, on 23rd September 2015, Reuben Karongo Wainaina died culminating to an application dated 14th November 2016 being filed to substitute him.
2. By consent, the said application was allowed on 8th May 2017 and Geoffrey Kariuki Wainaina came on record as co-administrator to the surviving administrator Wambui Gikira alias Wambui Wainaina Icharia. A rectified confirmed grant was issued to that effect on 8th May 2017.
3. Vide application dated 27th November 2017, but filed on 30th November 2017 under certificate of urgency, Geoffrey Kariuki Wainaina the second administrator sought orders directing the said Wambui Gikira the co-administrator to sign all necessary and relevant documents to facilitate completion of the administration of the estate in default her signatures and attendance be dispensed with in all processes relating to the completion of the administration of the estate herein. Application was supported by grounds on the face of it and an affidavit deposed by the applicant on 27th day of November 2017.
4. Despite service of the application herein, the respondent did not bother to file any response hence the application proceeded exparte unopposed. It is the applicant's contention that the respondent (co-administrator) has neglected and or refused to sign all necessary transmission documents to facilitate the transfer of shares to individual beneficiaries as per the confirmed grant. That despite every effort having been made in trying to persuade her sign the said documents, the same has been adamant hence the prayers sought.
5. I have considered the application herein which is not opposed. A certificate of confirmation was issued on 28th June 2011 and then rectified on 8th May 2017 following the death of one of the administrators. Since 28th June 2011 no step has been taken to facilitate completion of the administration of the estate which in law ought to have been completed within six months after confirmation.
6. Since there is no explanation given by the respondent as to why the administration of the estate should not be completed, this court has unfettered discretion under Section 66 and 76 to substitute an uncooperative administrator who fails to dutifully and diligently administer the estate with a more competent one to oversee the completion of the administration of the estate.
7. Accordingly, I am satisfied that the respondent has failed to execute her mandate as a trustee and appointee of the court in the administration of the estate herein and therefore ought to be stripped of the administration responsibilities as required under Section 66 of the Law of Succession. To that extent, application herein is allowed with orders as follows:

(a) That the respondent (administrator) herein Wambui Gikira alias Wambui Wainaina Icharia be and is hereby given 45 days within which to sign all necessary documents relevant

to facilitate the process of transmission of individual beneficiaries' shares and completion of the administration of the estate.

(b) That in default of the above directive, the respondent shall cease to be an administrator of the estate herein and a fresh grant and certificate of confirmation of grant shall issue to the applicant Geoffrey Kariuki Wainaina as the sole administrator to facilitate and complete the administration of the estate.

(c) Costs in the cause.

SIGNED, DATED AND DELIVERED AT NAIROBI ON THIS 9TH DAY OF MAY, 2018.

J.N. ONYIEGO (JUDGE)

In the presence of:

M/S Opiyo holding brief for Osero.....Counsel for Applicant

No appearance.....Counsel for Respondent

Edwin.....Court Assistant