

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 3239 OF 2005

IN THE MATTER OF THE ESTATE OF JEAN WAINAINA KABABU (DECEASED)

RULING

1. I delivered a ruling herein on 20th January 2017, where I dismissed an application dated 24th September 2009. In that application the applicants had argued that the assets listed in the instant cause did not belong to the estate of the deceased herein, but formed part of the estate of the late father of the applicant and the deceased herein. The property passed from the estate of their deceased father to the estate of their deceased mother, it was claimed and it was from their mother's estate that the said assets passed on to the deceased herein.

2. For the purpose of determining the application dated 24th September 2009, I called for the court files relating to the estates of the parents of the applicants and the deceased herein, being HCSC No. 140 of 1981 and HCSC No. 173 of 1990. The file in HCSC No. 173 of 1990 was availed but not that in HCSC No. 140 of 1981. From the file in HCSC No. 173 of 1990 I was unable to find material which supported the applicants' contentions and I was forced to dismiss the said application.

3. The court file in HCSC No. 140 of 1981 has now been traced. Counsel for the applicants in the application that I dismissed on 20th January 2017 insists that I should revisit the matter the dismissal notwithstanding.

4. I have perused the file in HCSC No. 140 of 1981. It is in respect of the estate of Jamlick Wainaina Kababu. He died on 18th August 1977. Administration to his estate was committed to Risphar Waiyego Kababu by a grant of letters of administration dated 16th April 1982. There is summons for confirmation of the said grant, dated 7th April 1988, but there is no minute in the file to indicate that the said application was ever heard and orders ever made on it. The grant was confirmed on the basis of another application, dated 7th June 1988, which had sought the joinder of the deceased herein as a co-administrator and confirmation of the grant thereafter. There is a certificate of confirmation of grant on record of even date. The same confirms the administrators but it does not have a schedule of the assets distributed or the names of the persons benefiting from the distribution.

5. I have also perused the court file in HCSC No. 173 of 1990 afresh. It appears from the cover as if the file relates to the estate of the mother of the applicants and the deceased herein, Risper Waiyego Wainaina. However, the petition presented in the matter by the deceased herein on 13th February 1990 was in respect of both the estates of Risper Waiyego Wainaina and Jamlick Peter Wainaina Kababu. In the end a grant of letters of administration intestate *de bonis non* in respect of the estate of Jamlick Peter Wainaina Kababu was made to the deceased herein. No grant issued with respect to the estate of Risper Waiyego Wainaina. The issue, therefore, of confirmation of a grant in respect of her estate in favour of the deceased herein does not arise. Curiously, the deceased herein filed an application herein dated 22nd September 1992 seeking confirmation of the grant to the estate of Risper Waiyego Wainaina. The record reflects that the said application was never heard. In any event it was dead in water as no such grant existed.

6. So from the material on record I do not see basis for me to depart from the position that I had taken in my ruling of 20th January 2017. I see no merit in the application in question. The applicants ought, perhaps, to have exhibited documents which demonstrate that the deceased herein caused the property of Jamlick Peter Wainaina Kababu to be transferred to his name using the grant or grants made in the two causes, that is to say HCSC No. 140 of 1981 and HCSC No. 173 of 1990.

7. I have very closely perused the court files in HCSC No. 140 of 1981 and HCSC No. 173 of 1990 and noted that in both the assets that comprised the estate of Jamlick Peter Wainaina Kababu are not indicated. Indeed, there is no mention in both of any asset. It is difficult, therefore, in my view; to find justification for the argument that the assets that make up the estate herein are the same that make up the estate or estates the subject of HCSC No. 140 of 1981 and HCSC No. 173 of 1990.

8. In the end, I reiterate the order made on 20th January 2017 dismissing the application dated 24th September 2009. The court file herein shall be transferred to the High Court of Kenya at Murang'a for the final disposal of the matter in terms of the said orders. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 5TH DAY OF OCTOBER, 2018.

W. MUSYOKA

JUDGE