



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
SUCCESSION CAUSE NUMBER 160 OF 2012
IN THE ESTATE OF JANE WANGARI NGURE (DECEASED)

RULING

1. Before court is the amended summons dated 17/7/2018. Orders sought are;

a) **THAT this Honourable Court be pleased to re-issue a grant in respect of the estate of JANE WANGARE NGURE (deceased) in the name of LUCY NJOKI KAMANJA as a sole administrator.**

b) **THAT this Honourable court do confirm the re-issued grant in respect of the estate of JANE WANGARE NGURE.**

c) **THAT this Honourable Court do have the land known as NYAHURURU/NDEMI/513, currently transferred to the previous administrator of the estate of JANE WANGARE NGURE (deceased), revert to its previous position as part of the estate of JANE WANGARE NGURE.**

d) **THAT the costs of this application be provided for.**

2. It is premised on thirteen grounds listed on the face thereof namely;

1. THAT the administration of the estate herein was vested in EZEKIEL MUENJA NGURE vide a certificate of confirmation of grant of letters of administration intestate dated 7th June, 2013.

2. THAT the aforementioned administrator transferred the land known as NYAHURURU/NDIEMI/513 to himself as the sole proprietor on 12/09/2013.

3. THAT the applicant herein, a beneficiary of the deceased did file a summons for revocation of grant under a certificate of urgency as the grant was obtained fraudulently by the concealment from Court of the existence of other beneficiaries of the abovementioned estate.

4. THAT subsequent to the above the Court did order the issuance of a fresh grant that was to include the applicant herein. The said grant was issued and dated 18th July, 2017.

5. THAT letters of administration intestate issued on the 18th of July 2017 were ripe for confirmation and as such the Court, in reissuance of the said letters of administration, should confirm the same.

6. THAT before the process had been completed, the 1st administrator EZEKIEL MUENJA NGURE passed away on 25/07/2017.

7. THAT the documents are executed by the administrators have been rendered inoperable arising from the demise of the 1st administrator.

8. THAT the transmission and eventually the transfer to the persons duly entitle to benefit under the estate cannot be effected on the basis of the existing Grant.

9. THAT the beneficiaries has consented and agreed upon the mode of distribution but the process stands without assistance of this honourable court.

10. THAT the beneficiaries herein have further consented to re-issue of a grant in the name of Lucy Njoki Kamanja as the sole administrator to carry out the administration of the estate herein.

11. THAT the estate can be effectively administered by a single administrator to facilitate the completion of the transmission hence the application herein seeking the discretion of the Court to be exercised in favour of the beneficiaries.

12. THAT the estate herein cannot be adequately dealt with in the absence of orders sought herein.

13. THAT it is only fair that a grant be re-issued in the name of the surviving administrator and the application herein be allowed.

3. It is supported by the affidavit of Lucy Njoki Kamanja sworn on the 17/7/2018.

4. The summary of the application, the grounds and the supporting affidavit is that by an order of court, a grant of letters of administration was jointly made to Ezekiel Muenja Ngure and Lucy Njoki Kamanja on 18/7/2017. That grant is yet to be confirmed.

5. Ezekiel Muenja Ngure has since passed on having died on 25/7/2017. A death certificate is annexed. Only one administrator is left.

6. It is prayed that a fresh grant be issued in the names of the remaining administrator Lucy Njoki Kamanja.

7. Ezekiel Muenja Ngure, had, when being a sole administrator before the grant he held was revoked, transferred land known as Nyahururu/Ndemi/513 to himself. The said property is now erroneously listed as part of the estate of Ezekiel.

8. Three (3) issues emerge for determination;

i) Whether the Court should re-issue the grant in respect of the estate of JANE WANGARE NGURE (deceased) in the name of LUCY NJOKI KAMANJA as a sole administrator.

ii) Whether the court should confirm the re-issued grant.

iii) Whether the court should have the land known as NYAHURURU/NDEMI/513 currently forming part of the estate of EZEKIEL MUENJA NGURE revert to its previous position as part of the estate of JANE MUENJA NGURE.

9. The ready answer for issue (a) above is found in the decision in **ANDREA RUTHIBU R. KANYIRI vs. TERESIA NJOKI MBUGU [2016] eKLR** where the judge stated;

“Regarding the death of the co-administrator, the position is that the grant... has become inoperative. The grant was made jointly to the applicant and his mother, who has now died. It was intended that the two act together in the administration of the estate. A grant is a certificate. It is issued to a particular person or persons. If the holder of the grant dies the grant becomes useless, as it cannot be transferred to another person. If it was made to two person and one dies it becomes inoperative. Under Section 76 of the Laws of Succession Act such grant is liable to revocation. It should be revoked and another grant made.”

10. As to whether the court should confirm the re-issued grant, I hold that once the grant is re-issued in the names of the sole administrator, the administrator should move to take out a summons for confirmation of grant, seek the necessary consents for all beneficiaries and serve any known interested party to allow room for any representatives/claims that a person or body of persons would wish to raise by way of a protest.

11. Land known as Nyahururu/Ndemi 513 was, as per form P&A 5 lodged in court by Ezekiel Muenja Ngure on 14/3/2012, the property of Jane Wangare Ngure. This property thus forms part (if not all) of the deceased's estate.

12. On the strength of a certificate of confirmation of grant dated 7/6/2013, the said property was shared out to Ezekiel Muenja Ngure in whole share.

13. A certificate of official search dated 7/9/2017 and marked as annexure “LNK2” in the affidavit of Lucy Njoki Kamanja sworn on 17/7/2018 shows that as at 3/12/2013, title Number Nyahururu/Ndemi 513 transmitted to Ezekiel Muenja Ngure.

14. The grant leading to the said transmission having been revoked by court vide its ruling dated 18/6/217, the natural legal avenue available for the benefit of the estate of Jane Wangare Ngure and the beneficiaries to the estate is to have the property Nyahururu/Ndemi/513 revert to the estate of Jane Wangare Ngure.

15. With the result that the application herein is partially successful and I make the following orders;

1. A grant of letters of administration to the estate of Jane Wangare Ngure to issue to Lucy Njoki Kamanja.

2. Land known as Nyahururu/Ndemi/513 to revert to the estate of Wangare Ngure.

3. Title issued to Ezekiel Muenja Ngure is hereby cancelled.

4. The appointed administrator to take out a summons for confirmation of grant within the next 30 days.

5. Costs be in the cause.

Dated and Signed at **Nakuru** this **13th** day of **December, 2018**.

A. K. NDUNG'U

JUDGE