

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1611 OF 2010

IN THE MATTER OF THE ESTATE OF MARGARET WAIRIMU GICHUHI (DECEASED)

RULING

1. The deceased herein died testate on 1st November 2004. She had executed a written will on 26th June 2004, in which she had named her sons, Peter Karanja Gichuhi and Francis Njenga Gichuhi, as executors. Representation to her estate was sought on 13th August 2010 by one of the two executors, Francis Njenga Gichuhi, in a petition dated 6th August 2010. A grant of probate of written will was made to him on 14th January 2013.
2. I am called upon to determine two applications for revocation of the said grant of probate. They are dated 5th June 2013 and 25th June 2013 respectively.
3. The application dated 5th June 2013 is brought at the instance of Elizabeth Wanjiru Gichuhi. She is one of the daughters of the deceased and is named as one of the beneficiaries under the will of the deceased. She alleges that the deceased died intestate, although in the same affidavit in support of her application, she says that the deceased had died testate and she had even filed a suit, HCCC No. 23 of 2006, claiming her entitlement from the estate as per the will of the deceased. She claims the grant herein was obtained fraudulently for her consent had not been obtained. She also alleges that the personal representative had not proceeded with diligence to administer the estate.
4. The second application is at the instance of the second executor, Peter Karanja Gichuhi. He complains that although the will of the deceased had named him as co-executor with Francis Njenga Gichuhi, the latter did not consult him before applying for representation to the estate. He was not cited, his consent for the other executor to proceed alone was not obtained, and neither had he waived his right or entitlement to apply for representation. He asserts that in the circumstances the said grant was obtained fraudulently and in a defective process. He would like the grant revoked and an order made that the process start afresh.
5. Francis Njenga Gichuhi responded to the two applications by swearing an affidavit on 13th September 2013, filed herein on 18th September 2013. He asserts that his co-executor had declined to join him in applying for representation. He states that the grant had not been confirmed and was unlikely to be confirmed before debts that he mentions have been paid.
6. The law on applications for grants of probate is not so stringent compared with that for grants of letters of administration, whether in intestacy or with the will annexed. Under section 53 of the Law of Succession Act, Cap 160, Laws of Kenya, probate may be granted to one or more of the executors named in the will. Under section 60 of the Act it is provided that where there are several executors appointed under the will, probate may be granted to them all simultaneously or at different times. Under section 51 of the Act, a petitioner for a grant of probate ought to disclose the address of any executor appointed by the will, and so does Rule 7(1) (g) of the Probate and Administration Rules.
7. There is nothing in the relevant legislation that requires a co-executor to inform or consult his co-executor before applying for representation as per the will. Neither is he required to get the consent or renunciation of the co-executor. These are required by section 62 of the Act and Rule 7 of the Rules for those seeking grants of letters of administration.
8. Upon perusing the relevant provisions, I am persuaded that the only provision that the petitioner

flouted is section 51(2) (f) of the Act and Rule 7(1) (g) of the Probate and Administration Rules, the non-disclosure of the addresses of all the executors named in the will. That is the only defect in the process that I have been able to detect, which is not fatal in my view. The grant of probate was quite properly made to the petitioner in the circumstances.

9. As the will of the deceased had appointed two executors it is only fair that Peter Karanja Gichuhi is added to the grant of probate as co-personal representative.

10. I am moved to make the following orders: -

(a) That the grant of probate made herein on 14th January 2013 shall be amended to include the name of Peter Karanja Gichuhi as co-personal representative; and

(b) That there shall be no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 20TH DAY OF JANUARY, 2017.

W. MUSYOKA

JUDGE