

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2546 OF 2012

IN THE MATTER OF THE ESTATE OF ROLF RAINER SCHMID (DECEASED)

RULING

1. The application for determination is a Summons dated 11th September 2015. It is brought at the instance of David Mukii Mereka. He seeks that the estate of one Sarah Njoroge be distributed within the estate of the deceased herein. .

2. The factual background is that Sarah Njoroge was a widow of the deceased herein, who had died testate on 1st October 2010, having made a will on 26th October 2011. In the said will, he distributed his property to his wife, Sarah Njoroge, his son, grandchildren and one Franciska Schering. Representation to the estate of the deceased herein was granted on 21st March 2013 to Sarah Njoroge, who had been named in the will of the deceased as executrix. The grant herein was confirmed on 29th October 2013, and it was ordered that the estate be distributed as the deceased's will of 26th October 2011.

3. The executrix died testate on 1st May 2015. Her will had been made on 24th April 2015. She had named the applicant herein, David Mukii Mereka, as the executor of her will. She had in the will distributed all the property that had been bequeathed to her by the deceased herein, Rolf Schmid. The persons named in her will as beneficiaries of her estate were her parents and her siblings.

4. The applicant apparently would not like to file a succession cause to the estate of Sarah Njoroge, instead he would like her estate administered through the estate of her late husband, Rolf Schmid. The said proposal is novel for the law envisages that estates of different individuals ought not to be handled in one cause. They must be handled separately. The question of the estate of an individual dead person being administered through the estate of another should not arise.

5. The property due to Sarah Njoroge from the estate of Rolf Schmid can only be accessed upon completion of the administration of the said estate. Additionally, the survivors of Sarah Njoroge can only access the property in a cause commenced with respect to the estate of the said Sarah Njoroge.

6. Essentially, upon the death of the executrix herein before completion of the administration of the estate, the next course of action should be to apply to the court for a grant of representation *de bonis non* limited to completion of administration. See *In the Matter of the Estate of Hannah Njoroge Njuki (Deceased)* Nairobi HCSC No. 453 of 1997. The deceased died testate, so the grant available thereafter should be letters of administration with the written will annexed limited as aforesated.

7. In view of what I have stated above, I find no merit whatsoever in the application dated 11th September 2015. The same is hereby dismissed with costs.

8. I note that the bulk of the estate comprises of assets situated within Kajiado County. Consequently, the matter herein shall be transferred to the High Court of Kenya at Kajiado for final disposal.

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

W. MUSYOKA

JUDGE