



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 2254 OF 2011**

**IN THE MATTER OF THE ESTATE OF SAMMY WOKABI KAMAU (DECEASED)**

**ROSEMARY WAMAITHA KAMAU.....PETITIONER/APPLICANT**

**VERSUS**

**PETER MUKURIA KAMAU .....RESPONDENT**

**RULING**

1. The deceased Sammy Kamau Wokabi died intestate on 24<sup>th</sup> December 2009. On 13<sup>th</sup> October 2011 his widow Rosemary Wamaitha Kamau (the applicant) petitioned the court for the grant of letters of administration intestate. The grant was issued on 21<sup>st</sup> February 2012. On 24<sup>th</sup> August 2012 she applied for the confirmation of the grant. The application came up for hearing on 2<sup>nd</sup> December 2012 when Peter Mukuria Kamau (a son of the deceased) opposed the mode of distribution that the applicant had proposed. On 17<sup>th</sup> February 2015 the said Peter Mukuria Kamau (respondent) applied for the confirmation of the grant following a mention on 24<sup>th</sup> March 2014 when the applicant withdrew the application for the confirmation of the grant. This followed her notice filed on 11<sup>th</sup> March 2014. She was given leave to file a fresh application. The applicant filed a replying affidavit to her son's application saying that the reason for withdrawing her application for confirmation was because there was pending in the High Court ELC (Nairobi suit No. 105 of 2013) in which parcels Dagoretti/ Waithaka/1176, Dagoretti/Waithaka/1177, Dagoretti/Waithaka/ 1178 and Dagoretti/Mutuini/92 were in issue. When the respondent sought to confirm the grant these parcels were indicated to be part of the estate of the deceased. The pleadings in the ELC case were not exhibited.

2. The present application was dated 28<sup>th</sup> July 2016. In it the applicant sought to have the application by the respondent (to have the grant confirmed) struck out with costs. Her grounds were that the respondent had no capacity to bring the application; the application was misconceived and therefore an abuse of the process of the court; and that there was the pending ELC case in which part of the estate was in issue. In the supporting affidavit she stated that she had withdrawn the application for confirmation because of the ELC case and that some of her children live abroad and were not available to sign the requisite consents. She went on to state that the respondent was not the administrator of the estate and therefore would not seek the confirmation of the grant.

3. The respondent's case was that the applicant has had the grant for 4 years and has failed to file summons for confirmation. This has led to loss and damage of the assets of the estate. He further stated

that the applicant has not been diligent in the administration of the estate, and had been collecting rent from some of the properties which she had neglected and/or refused to share equally to all the beneficiaries. He said that he was forced to file the application because of the delay, and because the applicant had not provided any reasonable justification or explanation for the delay in having the grant confirmed. As to whether or not he had capacity to seek the confirmation of the grant, his case was that the fact that he was a son of the deceased and a beneficiary of his estate gave him capacity.

4. Under **section 71(1)** of the **Law of Succession Act (Cap 160)** it is the holder of the grant who shall, after the expiry of six months, apply to the court for the confirmation of the grant. Under **section 76** of the **Act** the court at the request of any interested party or on its own motion, may at any time revoke or annul a grant where the person to whom the grant was made has failed, after due notice and without reasonable cause either-

i. to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or

ii. to proceed diligently with the administration of the estate; or

iii. to produce to court, within the time prescribed, any such inventory or account of administration or has produced such inventory or account which is false in any material particular.

This grant was issued over four (4) years ago. It was supposed to be confirmed after six (6) months. The beneficiaries who are out of the country could be reached to provide consent. If parcels Dagoretti/Waithaka/1176, 1177 and 1178 have a problem, the estate has parcels Dagoretti/Waithaka/871, Langata Development Plot No. 1660, Dagoretti/Mutuini/92, Loc. 2/Mairi/34, Loc. 17/Kamahuha/ 2229, and Loc. 17/Kamahuha/2220 in respect of which a confirmation application can be made. And even for the contested parcels, the application for confirmation can be served on the respective claimants for them to be heard before an order for distribution is made.

5. I find that the applicant has had no reasonable excuse for not applying for the confirmation of the grant issued to her. Her delay has been inordinate. I allow the application dated 28<sup>th</sup> July 2016 and strike out the application dated 6<sup>th</sup> December 2014, but ask the applicant/petitioner to pay costs on each application. I revoke the grant issued to the applicant on 21<sup>st</sup> February 2012, and issue a fresh one jointly to Peter Mukuria Kamau, Grace Wangari Kamau and Anthony Ng'ang'a Kamau. Further, I direct that the new administrators shall file an application to confirm the grant within forty-five (45) days from today.

**SIGNED and DATED at NAIROBI this 24<sup>th</sup> JANUARY 2017**

**A.O. MUCHELULE**

**JUDGE**

**DELIVERED at NAIROBI this 25<sup>th</sup> JANUARY 2017**

**W. MUSYOKA**

**JUDGE**