



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**SUCCESSION CAUSE NO. 593 OF 2001**

**IN THE MATTER OF THE ESTATE OF WAIGWA WACHIRA– DECEASED**

**FRANCIS WACHIRA WAIGWA.....PETITIONER/APPLICANT**

**RULING**

Before me is a petition for grant of letters of administration of assets unadministered (grant of letters of administration *de bonis non*) brought in respect to the Estate of Waigwa Wachira, by Francis Wachira Waigwa.

A certificate of confirmation of grant was issued on 27<sup>th</sup> March 2006 to Alice Wahito Waigwa, the widow of Waigwa Wachira and Francis Wachira Waigwa his son.

On 7<sup>th</sup> November 2011 Alice Wahito Waigwa died leaving part of the estate unadministered. Francis Wachira Waigwa seeks the grant to enable him complete the administration of the said estate. The two other beneficiaries to the estate have given their consent to this petition. They were also present during the hearing of the petition and confirmed their consents.

Rule 20 of the 5<sup>th</sup> schedule of the Law of Succession Act CAP 160 Laws of Kenya provides for grant of assets unadministered in the following terms;

**If the executor to whom probate has been granted has died, leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.**

The first thing I note is that neither the Law of Succession Act nor the Probate & Administration rules use the term grant *de bonis non administratis*. I cannot see why, for sake of simplicity, and sticking to the rule, we cannot just use the term 'unadministered estate'. I can imagine the un-represented petitioner struggling with the term, knowing what she wants from the court, and wondering she cannot just ask exactly what she is seeking from the court. The term may sound nice rolling off the tongues of 'learned friends' but I am of the view that it simply adds an un-necessary mystique to this process.

I have not found a specific provision relating to an intestate estate as rule 20 of the 5<sup>th</sup> schedule of the Law of Succession Act CAP 160 Laws of Kenya refers to a testator's estate. However, a google search at Kenyalaw.org has brought up numerous cases from both sides of the divide where judges have issued this grant with respect to intestate estates.

The purpose of this type of grant is basically for the completion of the administration of the estate upon

the death of the administrator. **In re Estate of Rolf Rainer Schmid (Deceased) [2017] eKLR**, Musyoka J. stated at paragraph 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.**

In his book, Law of Succession [i]the said Justice Musyoka, at page 136 gives the brief facts of the case he has cited above-

**... the grant of letters had been made to the deceased's husband who subsequently died before completing the administration of the estate. Her son brought an application seeking the removal of the deceased administrator's name and its substitution with his. The court directed that where an administrator dies and the estate is not fully administered, any of the beneficiaries might file for letters *de bonis non*.**

These facts are not very different from the facts of the matter before me. The administrator herein was the wife of the deceased, the petitioner is the son. He is a beneficiary of the estate and has the consent of all the others.

Hence having heard Mr. Kebuka Wachira for the petitioner, and having perused the petition and the affidavit in support of the same, and having heard the other beneficiaries' consents, I allow the petition and order;

**That a grant of letters of administration of estate unadministered of Waigwa Wachira (deceased) do issue to Francis Wachira Waigwa.**

Orders accordingly

Dated, delivered and signed in open court this 15<sup>th</sup> Day of February 2017

**Teresia Matheka**

**Judge**

In open court in the presence of

..... for applicant

Court Assistant - Harriet

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[i] Published by lawAfrica 2006