



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITUI**

**SUCCESSION CAUSE NO. 184 OF 2015**

**IN THE MATTER OF THE ESTATE OF MUSYOKA TUVA (DECEASED)**

**PAUL MWENDWA NDILEI.....APPLICANT**

**VERSUS**

**TITUS MUEMA MUSYOKA.....RESPONDENT**

**R U L I N G**

1. The Deceased, **Musyoka Tuva** died on **10<sup>th</sup> September, 1998**. A grant of Letters of Administration intestate in respect of his Estate was issued by **Titus Muema Musyoka** (Respondent) who was identified as the sole beneficiary to the Estate; and confirmed on the **5<sup>th</sup> May, 2010**. The description of properties forming the Estate were titles **Nzambani/Kyanika/578** measuring **0.7Ha** and **Mulango/Kyangunga** measuring **3.0Ha**.

2. Following an application by the Applicant herein, the grant was revoked by **Dulu, J** who further ordered that true beneficiaries and assets of the Deceased and the mode of distribution be ascertained by way of *viva voce* evidence. The matter was heard whereby it was established that both the Applicant and Respondent are entitled to benefit from the Estate.

3. In the application dated **29<sup>th</sup> November, 2016** the Applicant seeks to be appointed as the Administrator of the Estate. The application is premised on grounds that the Grant of Letters of Administration issued to **Titus Muema Musyoka** were revoked and the Estate reverted to the Deceased. **Titus Muema** has no capacity to sign any document regarding the Estate.

4. The application is supported by an affidavit sworn by the Applicant where he depones that the orders made by Court in respect of the Estate have resulted into the Estate not having an Administrator who is necessary to distribute the Estate.

5. The application is unopposed. The application was duly served and failure to respond by the previous Administrator of the Estate is a clear implication of lack of interest in administration of the Estate.

**Rule 73** of the **Probate and Administration Rules** states thus:

***“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”***

This is a matter where the Estate of the Deceased comprises of assets which must be distributed therefore there must be an Administrator. After a Ruling was delivered on **23<sup>rd</sup> January, 2015** the Respondent refused and/or neglected to appear before the Court even after being served with hearing notices. He has demonstrated that he is not fit to administer the Estate of the Deceased therefore the Applicant would be a better person to carry out the duty.

6. Following the order made by **Dulu, J** parties testified before Court and it was established that the Applicant and his sister **Stella Syokau** were entitled to benefit from the Estate of the Deceased. Without delving into the content of the Ruling dated **23<sup>rd</sup> day of January, 2015** I do order as follows:

7. A fresh Grant of Letters of Administration shall issue to **Paul Mwendwa Ndilei**.

8. A Certificate of Confirmation of Grant shall issue per the distribution of the Estate as stated in the Ruling dated 23<sup>rd</sup> day of **January, 2015**.

9. It is so ordered.

**Dated, Signed and Delivered at Kitui this 8<sup>th</sup> day of February, 2017.**

**L. N. MUTENDE**

**JUDGE**