

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

PROBATE AND ADMINISTRATION

SUCCESSION CAUSE NO. 60 OF 2016

IN THE MATER OF THE ESTATE OF GRACE MBODZE CHIHANGA (DECEASED)

RULING

The late Grace Mbodza Chihanga died on 16th June, 2016. Halan Kibet, the deceased's widower, petitioned this court for a limited grant. The amended petition indicate that a grant was limited for purposes of recovery of properties and accessing bank account without powers to distribute the estate. The petition indicate that the deceased was survived by the petitioner, Hashim Kombe (son) and Kaidza Kombe (daughter). It is indicated that the son was 19 years old while the daughter was 22 years old. This court issued the grant on 29th September, 2016 for the purposes indicated on the petition.

On 7th December, 2016, the deceased's daughter filed an application for the revocation of the grant. It is indicated that the grant was issued without disclosure of material facts. The deceased was married to one Samini Kombe Kithi through Mijikenda Traditional Marriage Rites. By the time the petition was filed Hashim was 17 years old and a student at Kraph Memorial Secondary school in Rabai. The petition was filed in haste without consulting other family members. The deceased left a house at Kwa Chocha but the petitioner has occupied that house. The full inventory of the estate was not given.

Miss Sidinyu appeared for the applicant while Mr. Majanga appeared for the petitioner. Miss Sidinyu submit that the petitioner has gone ahead and transferred assets into his own name. Hashim was a minor and two administrators were required. The petitioner has also transferred motor vehicle registration number KBX 929U into his own name. Mr. Majanga submitted that the children are listed as beneficiaries. The applicant has interfered in the estate as money deposited in bank account was withdrawn. The property at Kwa Chocha is not developed.

The purpose of a limited grant is to serve a specific purpose. From the submissions of the parties it is clear to me that the limited grant is not serving the purpose for which it was issued. The applicant is correct to indicate that they were not consulted when the petition was filed. Listing the applicant and her brother as beneficiaries is not sufficient. There is need for consultation and if Hashim was a minor in 2016 the grant ought to have been issued to more than one person. The petitioner contends that despite the grant the deceased's bank accounts have been dried up. Despite the contention by the applicant that the deceased was happily married to one Samini Kombe, the petitioner has annexed a marriage certificate stating that the deceased was married to the petitioner on 19th March, 2015 under the Marriage Act, 2014. The petitioner was therefore entitled to file the petition.

Given the pleadings herein, I do find that there is need for a formal grant to be applied for. That will enable all the parties to litigate and raise any issues they wish to raise. There is also need to find out from the banks what happened to any deposits that was left by the deceased. The estate has to be distributed in accordance with the law and the limited grant cannot fulfil that purpose. I do find that there is no need to let the grant continue operating. The petitioner should file a full succession cause and list the deceased's estate. If Hashim is still a minor by now then two petitioners have to file the cause. In the event that the petitioner does not wish to file any succession cause then the applicant can as well petition the court for letters of administration. I do find that the limited grant issued by this court on 29th September 2016 is serving no purpose and there is likelihood of it being abused. The grant is hereby revoked.

In the end, I do hereby revoke the grant issued on 29th September, 2016. The petitioner to seek letters of administration in a full succession cause within thirty (30) days hereof. In default the applicant shall be at liberty to file the succession cause. There shall be no orders as to costs.

Dated, signed and delivered in Malindi this 10th day of April, 2017.

S.J. CHITEMBWE

JUDGE