



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**SUCCESSION CAUSE NO. 1781 OF 2013**

**IN THE MATTER OF ESTATE OF JULIA NGUGI WANJIRU (DECEASED)**

HUMPHREY MUHAKO EFETHA..... APPLICANT

**VERSUS**

VIRGINIA GATHONI MWANGI.....RESPONDENTS

**R U L I N G**

1. The 1<sup>st</sup> Objector presented in Court a copy of the Grant of Probate in this cause said to have been issued to him in the United Kingdom. His counsel Mr. Ochieng submitted that the copy had been sealed by the British High Commission in Kenya and that at the back of the document were details which vouched for its authenticity.

2. M/s. Kamende for the other Objectors objected to the production of the Grant for reasons that there was no proof on record that the 1<sup>st</sup> Objector had approached the British High Commission to authenticate the Grant of Probate objected to. Further that they did not have any correspondence of the High Commissioner declaring, or the Probate Officer from the High Court confirming the authentication of the grant.

3. Counsel further submitted that the letter referred to was addressed to the 1<sup>st</sup> Objector and not to the Court, and it refers to a letter not before the Court so that it is not evident what letter that is. That in any case the letter only indicated that if a sealed copy of the Grant was required it would be provided and the letter itself was certified by a Counsel and not the court. That therefore the status of the document was the same as it was in the beginning.

4. Ms. Murimi Counsel for the Petitioner added her voice to that of Ms. Kamende and objected to the Grant of Probate being produced unless there was a Confirmation from the issuing Court that the Grant emanated from them.

5. Mr. Ochieng in a brief rejoinder referred the court to the provisions **Section 83** of the **Evidence Act** which state that the Court shall presume to be genuine documents that are certified and also that the officer who certified them had the mandate to do so at the time.

6. **Rule 42(1) of the Probate & Administration Rules** allows for the resealing of a grant issued in another country for purposes of distributing property forming part of the deceased's estate that is situated in Kenya.

7. The resealing of a grant under **Section 77** of the **Law of Succession Act however**, is a mandate of the High Court of Kenya and not of the respective embassies of the countries from which the grants emanate. Where a court or other authority, having jurisdiction in matters of probate or administration in any Commonwealth country or in any other foreign country designated by the Attorney General by notice in the Gazette, has, either before or after the commencement of this Act, granted probate or letters of administration, or an equivalent thereof, in respect of the estate of a deceased person, such grant may, on being produced to, and a copy thereof deposited with the High Court, be sealed with the seal of that court,

and thereupon shall be of like force and effect, and have the same operation in Kenya, as if granted and confirmed by that court. The resealing of the grant herein therefore, is the duty of the court and not the British High Commission in Kenya.

8. What is under contention in this case however is the authenticity of the grant that the 1<sup>st</sup> Objector seeks to produce in evidence and which he states was issued by the High Court of justice in Oxford United Kingdom. That can only be achieved by sending the copy of the grant to the court that issued it with a request for authentication. In the premise the objection by Ms. Kamende and Ms. Murimi to the production of the grant of probate by Mr. Ochieng is sustained.

**SIGNED DATED and DELIVERED** in open court this **3<sup>rd</sup> day of April, 2017.**

.....

**L. A. ACHODE**

**JUDGE**

**In the presence of .....Advocate for the Applicant**

**In the presence of .....Advocate for the Respondent**