



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 2986 OF 2007**

**IN THE MATTER OF THE ESTATE OF MICHAEL KARUMI MUTAMBA (DECEASED)**

**RULING**

1. What is for determination is the application dated 7<sup>th</sup> September 2016, for substitution of an executrix as personal representative of the deceased. There is also a prayer that the income collected from Mungaria House, which belongs to the estate, be utilized to settle a hospital bill owing to the Nairobi Hospital. It is supported by the affidavits of Peter Mutamba Karumi, a co-executor of the will of the deceased, and Petronilla Wambui Maina, the proposed co-administrator.

2. The application is founded on the allegation that the executrix sought to be removed as administrator had written withdrawing from administration of the estate. I have seen the alleged letter which is dated 7<sup>th</sup> March 2014, addressed to the beneficiaries. In it the executrix, Mary Waithera Mutambu, expresses her wish to withdraw from administration of the estate.

3. I have carefully perused my record. I have noted that I had made orders on 25<sup>th</sup> April 2014 directing the said executrix to file accounts in respect of her administration of the estate. She has never complied with those directions, and there is an unexecuted warrant for her arrest made on 6<sup>th</sup> October 2015. Failure to comply with court orders calling for tender of accounts is one of the grounds upon which a court can revoke a grant under section 76(d)(iii) of the Law of Succession Act, Cap 160, Laws of Kenya. What the applicants are asking me to do is to revoke the grant on record to the extent it appoints the executrix a personal representative of the estate of the deceased.

4. The executrix was served with the application, according to the affidavit of service on record sworn on 15<sup>th</sup> September 2016 and filed herein on 16<sup>th</sup> September 2016. She had opportunity to file a response to the application, but it would appear that she chose to stay away.

5. On the matter of the debt to the Nairobi Hospital, I have seen the documentation in support of the prayer thereon. I am satisfied that there is a genuine debt to that institution which remains unsettled.

6. I am satisfied that there is basis for grant of the orders sought, I shall accordingly dispose of the said application as follows:

**(a) That I hereby order the removal of Mary Waithera Mutambu as one of personal representatives of the deceased and appoint Petronilla Wambui Maina as administrator in her place;**

**(b) That the grant made on 5<sup>th</sup> March 2008 shall be amended accordingly;**

**(c) That as Petronilla Wambui Maina is not named in the will of the deceased dated 23<sup>rd</sup> November 2006 as executrix, the amended grant to be issued under (b) above shall be a grant of letters of administration with written will annexed;**

**(d) That the rental collections from Mungaria House shall be utilized by the administrators to settle the deceased's hospital bill at the Kenya Hospital Association trading as the Nairobi Hospital; and**

**(e) That Mary Waithera Mutambu shall bear the costs of the application.**

**DATED, SIGNED and DELIVERED at NAIROBI this 12<sup>TH</sup> DAY OF MAY, 2017.**

**W. MUSYOKA**

**JUDGE**