



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**SUCCESSION CAUSE NO. 840 OF 1988**

**IN THE MATTER OF THE ESTATE OF FREDA MUSIMBI MUDOGA (DECEASED)**

**RULING**

1. The application for determination is dated 16<sup>th</sup> July 2015. When it came up for hearing on 1<sup>st</sup> February 2017, Mr. Muturi informed that the same was unopposed, for the administrator had not filed any responses to it. I have gone through the record and noted that indeed the respondent had been served with the application, and there was no reply to it whatsoever. The application seeks revocation of grant, restraining orders with respect to a property known as House No. 23 Parklands on LR No. 209/80/4 IR 25729 Parklands Nairobi, revocation of the certificate of confirmation of grant dated 14<sup>th</sup> December 2011, rectification of a grant of representation previously made before the current administrator was appointed, redistribution of the estate, that the court disregards the settlement that culminated in the orders that confirmed the grant on, among other prayers.

2. I have carefully perused my record. To the extent that the application seeks revocation of a grant, directions ought to have been taken on its disposal. The issues raised in the matter are numerous and are far reaching, so long as they relate to revocation of a grant and for the setting aside of confirmation orders and redistribution of the estate. Such matters should only be disposed of through an oral hearing of the application. I am not satisfied that Rule 44 of the Probate and Administrations Rules has been complied with.

3. I have also noted that the instant application seeks the same orders as sought in similar applications on record, one of which has been determined and one that is still pending. There is on record an application dated 23<sup>rd</sup> October 2012 by one of the applicants herein, Febe Kasiemeka Indumwa. She seeks the setting aside or revocation or suspension of the confirmation orders made on 30<sup>th</sup> November 2011; revocation of the grant which was the subject of the confirmation orders that were made on 30<sup>th</sup> November 2011. All the prayers in that application are reproduced in the application the subject of this ruling. Directions have never been given on the disposal of the said application, and it is therefore still pending. There is also an application dated 12<sup>th</sup> August 2013, brought by the other two applicants in the instant application, Humphrey Lumadede and Charles Ngaywa, who are the children of Febe Kasiemeka Indumwa. That application was determined in a ruling delivered on 11<sup>th</sup> November 2014 which comprehensively dealt with the issues relating to the entitlement of the applicants to House No. 23 Parklands on LR No. 209/80/4 IR 25729 Parklands Nairobi. To that extent the matter of House No. 23 Parklands on LR No. 209/80/4 IR 25729 Parklands Nairobi is *res judicata*.

4. The application dated 16<sup>th</sup> July 2015 was only served on the current administrator. The certificate of confirmation of grant on record, which the applicants seek to have revoked, names four other individuals, apart from Febe Kasiemeka Indumwa and the administrator. The four others are Andrew Ahuga Mwenesi, Christopher Mudoga Mudasia, Belisi Mmboga Isanyia Joyce and Nyandiko Navade. LR No. 209/80/4 IR 25729 Parklands Nairobi was, according to the certificate of confirmation of grant, supposed to be shared equally by Febe Kasiemeka Indumwa and the administrator, and the four other survivors of the deceased. The other four no doubt have an interest in the matter and ought to have also been served with the application dated 16<sup>th</sup> July 2015 for its outcome shall have a profound effect on them.

5. In view of the above, I am unable to determine the application dated 16<sup>th</sup> July 2015 before the same is

served on Andrew Ahuga Mwenesi, Christopher Mudoga Mudasia, Belisi Mmboga Isanyia Joyce and Nyandiko Navade; and directions are taken in terms of Rule 44 on its disposal. The said application should also be disposed simultaneously with the application dated 23<sup>rd</sup> October 2012. Directions ought therefore to be taken on both applications. In view of the above, I am of the view that the interim orders granted on 21<sup>st</sup> November 2016 ought not to have been granted, and are hereby discharged. It is so ordered and directed.

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

**W. MUSYOKA**

**JUDGE**