



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE N O.623 OF 2012

**IN THE MATTER OF THE ESTATE OF ENOS KAWERI a.k.a. ENOS KHAWERI WETWA –
DECEASED**

FLORENCE ANYANGO AMAUMO APPLICANT

RULING

1. The applicant/administrator of the estate of the late *Enos Khaweri*, has filed an application dated 6th February 2017 seeking for orders that:-

(1) the orders of this court made on 31st May 2016 be set aside

(2) the application dated 12th November, 2015 be fixed for hearing.

2. The grounds in support of the application are that:-

“(a) The matter is pending confirmation of grant.

(b) On the 31st May 2016 the court declined to confirm the grant on the ground that the parcel of land was not in the name of the deceased.

(c) the applicant was registered owner only as an administrator as per the provisions of section 61(1) of the Land Registration Act, 2012.

(d) that the applicant now desires to be registered as per the provisions of section 61(2) of the Land Registration Act, 2012.”

3. The application is also supported by the affidavit of the applicant who depones in her affidavit that she was registered proprietor of the land as an administrator. That she was advised by the Land Registrar that it was lawful to do so under **section 61** of the Land Registration Act, 2012. That on 31st May 2016, the court declined to confirm the grant on the ground that the applicant has already been registered as proprietor. That it is on those grounds that she prays that the orders sought be granted and let the grant herein be confirmed.

4. **Section 61(1)** of the Land Registration Act, 2012 reads as follows:-

“If a sole proprietor or a proprietor in common dies, the proprietor’s personal representative shall on application to the Registrar in the prescribed form and on the production to the Registrar of the grant, be entitled to be registered by transmission as proprietor in place of the deceased with the addition after the representative’s name of the words :as executor of the will of ... (deceased)” or

“as administrator of the estate of ... (deceased)”, as the case may be.

5. **Sub-section 2 of section 61** states:-

“Upon confirmation of a grant, and on production of the grant, the Registrar may without requiring the personal representative to be registered, register by transmission –

(a) any transfer by the personal representative

and

(b) any surrender of a lease or discharge of a charge by the personal representative.”

6. On 31st May 2016, this matter came before **Justice Njoki Mwangi** on an application for confirmation of grant when she ruled that since the land was already registered in the name of the administrator, there was no estate available in the deceased’s name for distribution to his beneficiaries until the time when the title shall revert to the name of the deceased.

7. With all due respect to my sister Judge, I tend to differ with her considered view. **Section 61(1)** of the Land Registration act allows an administrator of the estate to be registered as proprietor of the estate “as administrator of the estate” and not as the real proprietor.

8. **Section 79** of the Law of Succession Act vests the property of a deceased to the personal representative. The section states:-

“The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.”

9. In my view, **section 61(1)** of the Land Registration Act, 2012, is in furtherance of **section 79** of the Law of Succession Act. There is

nothing wrong in a personal representative being registered as proprietor of the property of the deceased as an administrator of the deceased’s estate. The registration can take place even before confirmation of grant. There is nothing to bar the court from distributing such property.

In the foregoing, I find that the application dated 6th February 2017 is deserved. The application is hereby allowed as prayed.

Delivered, dated and signed at Kakamega this 11th day of May, 2017.

J. NJAGI

JUDGE

In the presence of:

Cc Paul/George

Nandwa HB Andia for applicant

Applicant