



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1885 OF 2002

IN THE MATTER OF THE ESTATE OF MUNIU KIHARA (DECEASED)

RULING

1. On 1st February 2016, the court delivered a judgment where it revoked the grant that had been made earlier to the widow and sons of the deceased, on the finding that the deceased had been survived by a widow and children. It was further directed that the estate be thereafter dealt with in terms of section 35 of the Law of Succession Act, Cap 160, Laws of Kenya.
2. On 12th April 2016, a summons was lodged herein, dated 6th April 2016, by the children of the deceased seeking that their mother be appointed administrator of the estate, that the subdivision of the estate property be reversed so that the same reverts to the original title and that the said grant be confirmed so that the estate is shared equally amongst the children of the deceased.
3. The record reflects that the application was served on the persons named in it as respondents. There is only one reply on record, through an affidavit sworn on 13th July 2016 by Solomon Kamau Muniu. He has no objection to the application.
4. It was directed on 13th September 2016 that the application be disposed of by way of written submissions. Both sides have filed their respective written submissions. Both sides vouch for the mother, save that the respondents, who are the sons of the deceased, submit that as she is elderly, at age ninety, she should be jointly appointed with some of the children.
5. The application is not opposed so far as the appointment of administrators is concerned. According to section 66 of the Act, the widow has first priority to administration, followed by the children. As the widow in this case is elderly, she should not be sole administrator, but should be appointed jointly with some of the children. The grant was revoked because the daughters had been left out. I am disposed to appoint her jointly with one of the sons and one of the daughters.
6. There is a prayer for cancellation of certain titles and their reversion to the original title Githunguri/Kanjai/526. The confirmation of the previous grant was revoked so as to pave way for a redistribution of the estate. That cannot happen without the property being reverted to its original form.
7. The applicants have asked that the grant to be made herein be confirmed and the estate be shared out equally amongst all the survivors of the deceased. That is not tenable. Under section 71 of the Act, under which the instant application is brought, confirmation can only be sought by the holder or holders thereof. The applicants are not holders of a grant of representation to the estate of the deceased. They cannot therefore petition for confirmation of a grant they do not hold. In any event there is no grant available for confirmation.

8. In the end I make the following orders:

- a. That I hereby appoint Wambui Muniu, Solomon Kamau Muniu and Regina Njeri Muniu, administrators of the estate of the deceased;
- b. That a grant of letters of administration intestate shall issue to them accordingly;
- c. That I direct the Land Registrar responsible for Kiambu County to cancel the title deeds relating to Githunguri/Kanjai/ 2428, 2430, 2431, 2432, 2433, 2434, 2451, 2452, 2473, 2474, 2548, 2549, 2614, 2615 and 2617 and revert the same to the original title Githunguri/Kanjai/526;
- d. That the administrators appointed under (a) above shall apply, within sixty (60) days hereof, for confirmation of the grant made to them in (b) above;
- e. That the property in question is situated in Githunguri of Kiambu County and the survivors of the deceased appear to be resident there hence the cause shall accordingly be transferred to the High Court of Kenya at Kiambu for final disposal; and

That there shall be no order as to costs.

DATED and SIGNED at NAIROBI this 3RD DAY OF MAY, 2017.

W. MUSYOKA

JUDGE

DELIVERED and SIGNED this 5TH DAY OF MAY, 2017.

M. MUIGAI

JUDGE