

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 2636 OF 2006

IN THE MATTER OF THE ESTATE OF JAMES KINUTHIA KINYANJUI (DECEASED)

RULING

1. The application dated 16th December 2015 is brought at the instance of John Njenga Kinuthia, one of the executors of the will of the deceased. He would like an order made by consent on 17th June 2014 to be set aside on the grounds he was not party to the consent, and his lawyer, who had just withdrawn from the matter, could not bind him.

2. His plea is opposed. Irene Wacuka Kinuthia swore an affidavit on 29th August 2016 to state that the applicant is based abroad in Sweden; hence he has been unable to discharge his duties as executor of the will of the deceased, leaving Stephen Marabu Mwangi to act for many years as sole executor. He is described as disinterested in the management of the estate. There are similar affidavits by other beneficiaries, such as Samuel Chaga and Serah Wamaitha Kinuthia.

3. The consent was recorded on 17th April 2014 after Mr. Githuka had expressed his frustration with his inability to get instructions from counsel for the instant applicant. Indeed, the matter was mentioned many times on many issues but the court could not make progress as both the applicant and his counsel were not attending court sessions, and it appeared as if Mr. Githuka was reluctant to come to court without a proper brief from the applicant. Tired of the *status quo*, he withdrew from acting. He was not party to the consent that was recorded on 17th April 2014.

4. I am cognizant of the fact that executors are appointed by the testators and not the court. The court cannot remove them from office as executors, but it can revoke grants made to them. That is what happened on 17th April 2014. I am not persuaded that the applicant should be reinstated. The application is accordingly dismissed. Costs shall be in the cause.

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