



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 622 OF 2014

IN THE MATTER OF THE ESTATE OF GIKUNJU GACHARA(DECEASED)

PETER MUTIGA MACHARIA..... PETITIONER

- V E R S U S -

JOHN GIKAARA MACHARIA..... PROTESTOR

R U L I N G

The Summons General before me is dated 22/5/17 and was brought under s.76 (e) of the Law of Succession Act Cap 160, and Rules 44 ad 73 of the Probate and Administration Rules.

The applicant George Gikaara Macharia seeks orders: -

- 1) That the grant of letters of administration intestate issued to **Peter Mutiga Macharia** (Deceased) be revoked as he died not having completed the distribution of the Estate.
- 2) That a fresh grant be issued to George Gikaara Macharia.
- 3) That the fresh grant be confirmed without waiting for 6 months.

Section 76 (e) of LOSA provides for revocation of a grant that has become useless and inoperative through subsequent circumstances. Rule 44 provides for the procedure and 73 the inherent powers of the court to ensure justice and prevent the abuse of the court process.

The application is supported by the affidavit sworn by the applicant on 22/5/2017 and the annexed certificate of death. He depones that the deceased GICHUNJU GACHARIA was survived by;

Peter Mutiga Macharia

Elishiba Gatheru Mwangi

Himself

Jane Wairagu Macharia

David Wagura Macharia

Stephen Gichuru Macharia

Grant of letters of administration intestate were issued to Peter Mutiga Macharia on the 18th November 2014. Upon the death of the administrator on the 17th of February 2017, the beneficiaries agreed that the applicant be issued with the new grant of letters of administration intestate to enable him complete the distribution of the Estate. The other beneficiaries to the estate of Gichunju Gachara filed a consent dated 22/5/2017 to the issue of grant of letter of administration to George Gikaara Macharia.

When the application came for hearing on 23/5/2017 present also in court were;

John Gikaara Macharia

Teresa Wanjiru Mwangi

Consolata Wangari Mwangi

These are beneficiaries of **the Estate of Muchiriga Gachara** the subject matter of **Nyeri Succession Cause 147 of 2014**. The deceased therein is a brother of the deceased in this cause. John Gikaara Macharia is the administrator of that estate having been issued with grant letters of administration intestate on the 15th day of August 2015.

Before his death Peter Mutiga Macharia had filed a summons for the confirmation of grant dated 26th July 2016 seeking to distribute the Land Parcel no. **MAHIGA/ROKERA/8**. This prompted a protest from John Gikaara Macharia the administrator of the estate of Muchiriga Gachara filed on the 16th August 2016. At paragraph 4 he deponed that his father owned the land parcel no. **MAHIGA/ROKERA/8** and Gichunju Gachara owned **MAHIGA/ROKERA/10**. THAT there was a mix up because the family of Gichunju Gachara were in physical occupation of MAHIGA/ROKERA/8, while his family was in occupation of MAHIGA/ROKERA/10. That explained his and his siblings' presence during the hearing of the application.

The two administrators told the court that they had agreed that each family would remain in

However, that was not the subject of the application before me.

The only issue for determination before me is the revocation of the grant issued to Peter Mutiga Gachara following his death. That application is supported by the other beneficiaries.

That prayer is granted.

Regarding the prayer for the confirmation of the grant, the proviso to section 71 of the LOSA on confirmation of grants is clear.

Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed such grant shall specify all such persons and their respective shares.

In view of what I have set out herein above on the mix up of the two estates the grant herein cannot be confirmed until that issue is dealt with. The administrator of each of the estate is aware of the problem. They indicated they were in some form of agreement on the way forward.

In his affidavit of protest John Gikaara Macharia the administrator of the Estate of Muchirigia Gachara proposes a new mode of distribution of the estate i.e. MAHIGA/ROKERA/8. This has not been responded to by the petitioner herein and there is nothing to show that he is in agreement. He proposes

that the two files be mentioned together during the confirmation so that the matter can be brought to an amicable end. It is important that whatever the parties agree to is done so in writing so that they can tell the court exactly how they intend to settle the issue.

Hence the prayer for the confirmation of the grant will be held in abeyance pending the settlement of this issue. Parties are at liberty to file a consent as intimated during the hearing of this application

In view of the foregoing I order as follows;

1. The grant issued to Peter Mutiga Macharia on the 18th November 2014 is revoked.
2. A fresh grant to issue to George Gikaara Macharia.
3. The Confirmation of the grant to be held in abeyance pending the settlement of the mix up in the estates of Muchiriga Gachara and Gichunju Gikara both deceased.
4. Costs in the cause.

Dated, Signed and delivered this 14th Day of June 2017 at Nyeri

TERESIA MATHEKA

JUDGE

In the presence of;

The Parties

Mr. Mshilla for the Protester

Court Assistant Harriet