



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1440 OF 2000

IN THE MATTER OF THE ESTATE OF SEBASTIAN KARANJA MACHARIA (DECEASED)

RULING

1. I am tasked with determining two applications. The first one in time is dated 12<sup>th</sup> November 2013. It seeks confirmation of the grant of the written will of the deceased. The second in time is dated 19<sup>th</sup> November 2013, and it seeks, in the main, orders to restrain named individuals from interfering with the applicant's quiet occupation and possession of Githunguri/Gathangari/758.
2. The two applications are at the instance of Virginia Muthoni Karanja, one of the widows of the deceased and a beneficiary under the will of the deceased. She avers that court had in the judgment of 14<sup>th</sup> November 2011 upheld the will, except for two motor vehicles taken away by the respondents. She would like the estate distributed as per the said judgment, and the respondents restrained from interfering with the landed property willed to her by the deceased.
3. Regarding the application dated 12<sup>th</sup> November 2013, the summons for confirmation of the grant of probate, I do note that the deceased died testate. He had made a will in which he had named an executor, Joseph David Muturi. It is the said Joseph David Muturi who obtained probate to the will on 5<sup>th</sup> September 2000. There is no evidence that the said Joseph David Muturi has died or renounced probate.
4. The application dated 12<sup>th</sup> November 2013 is not at the instance of the executor of the will, who is also the holder of the grant of probate made on 5<sup>th</sup> September 2000, Joseph David Muturi. It is instead brought by Virginia Muthoni Karanja, who is named in the will as one of the beneficiaries.
5. Confirmation of grant of representation is governed by Section 71 of the Law of Succession Act (Cap 160 Laws of Kenya). Section 71(1) states as follows:-

**“After expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date if any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.”**

6. From the wording of Section 71(1) of the Act, it is clear that only the person named in the grant of representation as the personal representative of the deceased can apply for confirmation of the grant. The position has been affirmed by my predecessors in *In the Matter of the Estate of Kihagi Wamai Nyeri High Court Succession Cause Number 266 of 1995* and *In the Estate of Njoroge and another (2003) KLR 75*, where it was stated that confirmation of a grant of representation should only be applied for by and be made to the holders of the grant.

7. In the instant case the holder of the grant of probate made on 5<sup>th</sup> September 2000 is Joseph David Muturi and not Virginia Muthoni Karanja. Only he can seek and obtain confirmation of the grant made to him. Nobody else can. Consequently, the application dated 12<sup>th</sup> November 2013 is incompetent.
8. With regard to the application dated 19<sup>th</sup> November 2013, I have noted that Maraga J. in the judgment of 14<sup>th</sup> November 2011 upheld the will made on 6<sup>th</sup> June 1998. In the said will the deceased had bequeathed Githunguri/Gathangari/758 to the applicant, Virginia Muthoni Karanja, in the following terms-

**“Unto my wife VIRGINIA MUTHONI KARANJA all that parcel of land known as GITHUNGURI/GATHANGARI/758 absolutely and nobody else except my children with VIRGINIA MUTHONI KARANJA shall lay any claim to any part of this land nor enter such land with the intention to harness my said wife or to cultivate in that land or otherwise deal with it. I specifically state that for the avoidance of doubt that the permanent house (s) on the said land I give it to my wife VIRGINIA MUTHONI KARANJA to reside therein for her lifetime and thereafter to her children jointly. I give to her also all the furniture and fittings in such house(s) together with all other chattels appertaining thereto.”**

9. The applicant by her affidavit sworn on an unknown date in 2013 pleads that on 13<sup>th</sup> November 2013 the respondents had forcefully evicted her from Githunguri/Gathangari/758, destroyed her property, removed her livestock, chased away her workers and forcefully occupied the property.
10. I have carefully gone through the record and noted that there are no replies to the application dated 19<sup>th</sup> November 2013. I have also noted that there is no evidence that the application dated 19<sup>th</sup> November 2013 was ever served on the respondents for there is no affidavit of service on record.
11. In the end the orders that I do make in the circumstances are:-

- a. **That the application dated 12<sup>th</sup> November 2013 is hereby dismissed;**
- b. **That prayers (b) and (c) of the application dated 18<sup>th</sup> November 2013 are allowed to subsist until the distribution of the estate of the deceased; and**
- c. **That costs shall be in the cause.**

**DATED, SIGNED and DELIVERED at NAIROBI this 5<sup>TH</sup> DAY OF FEBRUARY, 2016.**

**W. MUSYOKA**

**JUDGE**