



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 651 OF 2012

TERESIA WANJIKU WAINAINA.....1ST APPLICANT

MARTIN MUIRURI WAINAINA.....2ND APPLICANT

VERSUS

DORCAS NYOKABI NYOKABI1ST RESPONDENT

JULIUS KAMAU WAINAINA.....2ND RESPONDENT

EVA WANJIKU WAINAINA2ND RESPONDENT

RULING

1. Samuel Wainaina Muiruri, the deceased to whose estate these proceedings relate died on 15th November 2011. He was survived by one widow Teresia Wanjiku Wainaina and nine children. Vide an application dated 29th March 2012 the widow cited Dorcas Nyokabi Wainaina, Julius Kamau Wainaina and Eva Wanjiku Wainaina as being unwilling to consent to Teresia Wanjiku Wainaina and Martin Muiruri Wainaina applying for grant of letters of administration. On 24/4/2012 Teresia and Martin applied for grant of letters of administration and gazetted on 27/7/2012. Subsequently on 22/6/2012 Dorcas Nyokabi Wainaina, Julius Kamau Wainaina and Eva Wanjiku Wainaina objected to the making of the said grant and it was during this time that it emerged that there were two succession causes in respect of the administration of his estate HCCC 651/12 and 871/2012 and the two were consolidated. On 28th July 2014 Justice L. Kimaru appointed Teresia Wainaina and Dorcas Wainaina as administrators of the deceased's estate. This is what culminated to the current application dated 18/9/2014.
2. The applicant prays for the following orders;
 - i. That the grant issued by this Honorable Court to Teresia Wanjiku Wainaina and Dorcas Nyokabi Wainaina on 28th July, 2014 be and is hereby revoked for reasons that it has become, useless and inoperative through subsequent circumstances.
 - ii. That a fresh grant be issued to Teresia Wanjiku Wainaina and any other beneficiary of the estate
 - iii. That costs be in the cause.
3. On her part Teresia, states that the issuance of the said grant intensified the already existing intense verbal assaults between her and Dorcas Nyokabi Wainaina, her step daughter as she has refused to co-operate with her in administering the estate claiming that she is a home wrecker and is responsible for her mother's death. She states that Dorcas has taken a fiery stand that there are

two houses in the estate and she should be the one to state what flies. She added that Section 40 of the Law of Succession Act does not apply to the deceased's estate. She relied on pleadings in CMCC No. 4724 of 2012 to show the frosty relationship between her and the step daughter. Efforts to seek co-operation from Dorcas have been futile rendering the grant useless/ inoperative. She added that failing to revoke the same would mean all parties get stuck in a rut that will create endless wrangles.

4. The application was opposed Dorcas. On her part stated that the applicant has not adduced any evidence to support her claim and has not made efforts to work with her in the administration of the deceased's estate. She argues that Julius her brother undergoes rehabilitation for alcoholism and is not capable of administering the estate and that he only being manipulated by the 1st administrator. She urged the applicant to remove herself as an administrator.
5. In reply Miss Ontiti for the applicant denied Julius having indicated that he was unable to administer the deceased's estate and reaffirmed that the respondent was indifferent to Teresia.
6. Julius on his part stated that he was currently jobless but used to work with the deceased and was currently staying with friends and was last in rehab in 2012.
7. I have considered the written submissions filed by the applicant together with the oral submissions made in court and my interactions with the parties in Court. The provisions of Section 66 of the Law of Succession Act Cap 160 are clear, that where a deceased had died intestate the court shall save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administrations shall in the best interest of all concerned be made. It appears that there is bad blood between the applicant and respondent as evidenced by the pleadings in CMCC No. 4724 of 2012 still pending in court. Their animosity was also displayed openly in court when I spoke to the parties. It is evident that the parties cannot continue to be the administrators. I would have expected the administrators' to co-operate in administering this estate but due to their bad relationship they are unable to properly administer the estate of the deceased.
8. The application before me has be brought by Teresia one of the co-administrators she has expressed her frustrations. Under Section 76 (e) of Cap. 160 the court can revoke a grant of representation if it becomes useless and inoperative through subsequent circumstances. It is my view that the grant that was issued has become inoperative due to the bad blood between the administrators.
9. The Law of Succession Act provides at Section 66 provides the general guide of order of preference of persons to administer an estate of a deceased who died intestate. The applicant is a surviving spouse as provided under section 66(a). Section 66(b) is the next preference that caters to the next beneficiaries entitled on intestacy, with priority according to their respective beneficial interest as provided by part v. Dorcas is the 1st born of the 1st wife however there is bad blood between her and Teresia the 1st administrators and the two cannot see eye to eye. This was clearly displayed before the court when the court attempted to reconcile them. The second born is Julius Wainaina who told this court that he has been undergoing rehabilitation. It was submitted by counsel for the respondent that he undergoes rehabilitation for alcoholism. With this in mind it is my view that it will not be in the best interest of the estate to replace Dorcas with Julius. Am left with Eva Wanjiku Wainaina who is currently 24 years as the letter from the provincial commissioner dated 14th March 2012 placed her age at 22 years. It has not been shown that she is not mature to understand the estate. I must bear in mind the interest of these beneficiaries must be taken into account in the administration of the estate. Due to the bad blood and hostility between Teresia Wanjiku Wainaina and Dorcas Nyokabi Wainaina I hereby revoke the grant issued on 28th July 2014 for reasons that it has become inoperative. A fresh grant shall issue to Teresia Wanjiku Wainaina and Eva Wanjiku Wainaina. Costs shall be in the cause.

Orders Accordingly.

Dated, signed and delivered this 6th day of *February*, 2015.

R. E. OUGO

JUDGE

In the presence of:-

Miss Onditi for the Applicants

Miss Wambui for the Respondents

Mr. Makori Court Clerk