



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

MISCELLANEOUS APPLICATION NO. 7 OF 2014

IN THE MATTER OF THE ESTATE OF KARIUKI KUBUTA (DECEASED)

AND

JOSEPH MWANIKI KUBUTA.....APPLICANT

RULING

Joseph Mwaniki Kubuta, the applicant herein has moved this court by way of a Notice of Motion dated 17th March 2014 seeking leave to file a succession cause in respect of the estate of his deceased brother *Kariuki Kubuta* without producing a death certificate.

The application is not grounded on any provisions of the law but since the applicant is unrepresented, this court in the exercise of its inherent jurisdiction and in the spirit of administering substantive justice will disregard this anomaly and find that the application has been brought under **Rules 49 and 73** of the **Probate and Administration Rules**.

The applicant avers in his supporting affidavit that he intends to file a succession cause in respect of his brother's estate but he does not have a death certificate; that his brother died in the 1960's when this country did not have a system of registering deaths and hence no death certificate was issued in respect of his late brother's death.

Since a grant of representation is always sought in respect of the estate of a dead person, it follows that the person seeking such grant must provide proof of death of the person in question.

Rule 7 of the **Probate and Administration Rules** which sets out the information which must be contained in an application for grant of representation requires that such an application must be supported by proof of death.

Rule 7(2) of the said **Rules** states that “*there shall be exhibited in the affidavit a certificate or a photocopy of a certificate of the death of the deceased or such other written evidence of the death as may be available*”.

In this case, though the applicant has not annexed to his affidavit a certificate of death as the same is not available, he has attached a letter from the chief of his area Ngariama Location dated 10th March 2014 confirming that the deceased *Kariuki Kubuta* died in the 1960's.

My interpretation of **Rule 7(2)** is that proof of death need not be done strictly by way of availing a certificate of death but can be done by “*such other written evidence of the death as may be available*”.

In my view, this is not to say that courts will not require strict proof of death in applications seeking grant

of letters of administration by insisting on the applicants exhibiting a certificate of death. It only means that in appropriate cases such as the present one, the court can exercise its discretion and allow death to be proved by any other written evidence which is available.

In this case, the only available evidence confirming the death of **Kariuki Kubuta** appears to be the letter dated 10th March, 2014 authored by the chief of the area the deceased hailed from.

In the circumstances of this case, I find that the chief's letter satisfies the requirements of **Rule 7(2)** of the **Probate and Administration Rules**.

I therefore allow the application. The applicant **Joseph Mwaniki Kubuta** is hereby allowed to apply for grant of representation of the deceased's Estate using letter dated 20th January 2014 written by **Chief Muchiri Karia** of Ngariama Location as proof of death of **Kariuki Kubuta**. There will be no order as to costs.

C.W. GITHUA

JUDGE

DATED, SIGNED AND DELIVERED AT KERUGOYA THIS 13TH DAY OF MAY 2014 in the presence of:-

The applicant

Mbogo Court Clerk