

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

SUCCESSION CAUSE NO. 1077 OF 1993

IN THE MATTER OF THE ESTATE OF ROBERT MUNGAI GICHINJE – DECEASED

RULING

1. The applications for determination are dated 14th November 2012 and 25th September 2012. The application dated 14th November 2012 seeks revocation of grant while that dated 25th September 2012 seeks that the Deputy Registrar do execute certain documents for the purpose of transmission of the estate.
2. I had directed on 6th February 2013 that the revocation application be resolved first, therefore I shall deal only with the application dated 14th November 2012 leaving that dated 25th September 2012 dealt with on a later date.
3. The application dated 14th November 2012 seeks the setting aside of the grant, that all the beneficiaries be adequately provided for in terms of some proposals made in the supporting affidavit and that payments from Safaricom Limited on account of plot number Dagoretti/Thogoto/T.296 be frozen until further orders.
4. I note that the applicant seeks the setting aside of the grant instead of its revocation. I also note that the applicant is seeking that the estate be distributed in a certain way, yet what is before me is a revocation application and not a confirmation application. I note too that it has been confirmed that Dagoretti/Thogoto/T.296 does not form part of the estate and therefore the orders sought with respect to that property are not available.
5. The deceased died on 12th July 1986. Representation to his estate was sought on 1st August 1993 by Anne Mugure Muinamia and George Livingstone Ndungu. A grant of letters of administration intestate was made to them on 25th January 1994. The grant was confirmed on 19th May 1995 and the estate was shared equally between the two administrators.
6. The issue that the applicant is raising in his application ought to have been raised at the hearing of the confirmation application. If he was unhappy about the confirmation process he ought to have moved the court appropriately.
7. I am not satisfied that that the matters raised in the application dated 14th November 2012 bring it within the provisions of **Section 76** of the Law of Succession Act. It is not alleged that the process of obtaining the grant was defective and fraudulent nor that there has been lack of diligence in administration.
8. The application dated 14th November 2012 is misconceived. I hereby dismiss the said application with costs. The applicant in the application dated 25th September 2012 is at liberty to fix the same for hearing.

DATED, SIGNED and DELIVERED at NAIROBI this 3rd DAY OF October 2014.

W. MUSYOKA

JUDGE

In the presence of Mr. Nyahena advocate for the respondent.