

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCC CAUSE NO. 1206 OF 1999

IN THE MATTER OF THE ESTATE OF AGNES MWIKALI MWILU – (DECEASED)

RULING

The application I am called upon to determine is dated 18th November 2009. It is brought by Janet Nzisa Ndegwa seeking that the grant of probate made on 31st May 1997 to her and George Musyoka Mwilu be revoked. It also seeks several other consequential orders.

The holders of the grant sought to be revoked are the executors of the will of the deceased, whose estate is the subject of these proceedings. She died intestate on 10th June 1997 having made a will on 31st May 1987. In the said will she appointed George Musyoka Mwilu and Janet Nzisa Mwilu as executors. The two sought representation to the estate through a petition for a grant of probate of written will filed in court on 7th June 1999. Grant was made to the petitioners on 28th July 1999.

It must be stated from the outset that the grant sought to be revoked through the application dated 18th November 2009 does not exist. The deceased died 10th June 1997, and it is inconceivable that representation to her estate could have been obtained on 31st May 1997, that is to say a week and half before she died. I am being invited to revoke a grant that does not exist. I will not act in vain. The application is therefore incompetent to the extent that it asks the court to do the impossible.

The application is hereby dismissed with costs to the respondents.

DATED, SIGNED and DELIVERED at NAIROBI this 8th DAY OF November, 2013.

W. M. MUSYOKA

JUDGE