



REPUBLIC OF KENYA

High Court at Kitale

Probate & Administration 134 of 2000

JOANA MUGO KARANJA ::::::::::::::::::::::::::::::::::::::: DECEASED.

AND

REBECCA WANJIKO MUGO ::::::::::::::::::::::::::::::::::::::: PETITIONER.

R U L I N G.

The late Joana Mugo Karanja died on 4th March, 1999. His widow Rabeca Wanjiku Mugo (now deceased) petitioned for grant of letters of administration respecting his estate comprising of movable and immovable assets valued at Ksh. 4.4 million. Apart from the widow, the deceased was survived by thirteen children including Joseph Maina Mugo (the respondent in this application) and the late Jacob Murambasha Mugo. The grant was issued was the 6th March, 2001 in favour of the widow Rabeca or Rebecca Wanjiku Mugo and the eldest son of the deceased, Isaac Mwangi Mugo.

However, the widow died on the 4th July, 2002 and after a considerable period of time, the respondent Joseph Main Mugo applied to be appointed a co-administrator of the estate of the late Joana Mugo Karanja.

The application was granted on 15th July, 2010. a fresh grant was issued on that date but it did not reflect the name of Isaac Mwangi Mugo as a co-administrator.

On 2nd November, 2010, the respondent took out summons for confirmation of grant without including the name of the co-administrator. Nonetheless, the grant is pending confirmation.

In the meantime, the present application dated 13th April, 2011 was filed herein on 20th April, 2011 by Catherine Murambasha, widow of the late Jacob Murambasha Mugo, seeking orders that:-

- (1) The name of Jacob Murambasha Mugo be replaced with her own name as a beneficiary.
- (2) The grant of letters of administration issued to the respondent be confirmed in accordance with the distribution mode proposed by the late former administrator, Rabeca Wanjiku Mugo.
- (3) The respondent, administrator be restrained from encroaching into the applicant's 6.33 acres which was distributed to her and her late husband Jacob Murambasha.
- (4) Isaac Mwangi Mugo be enjoined as a co-administrator of the estate.

The application is anchored on grounds on the face of the chamber summons dated 13th April, 2011 as supported by the averments contained in the applicant's supporting affidavit dated 13th April, 2011 and is opposed by the respondent on the basis of the averments contained in his replying affidavit

dated 13th July, 2011. Learned counsel, **Mr. Nyakundi**, agued the application on behalf of the applicant while learned counsel, **Mr. Wanyonyi**, argued the same on behalf of the respondent.

This court has carefully considered the application on the basis of the supporting grounds and the submissions in respect thereof. The court has also considered the grounds of objection raised by the respondent in his replying affidavit. To start off, it may be noted that the court is more concerned with the substance of the application rather than its form. The argument by the respondent that the application is incompetent and/or defective in as much as it is brought by way of a chamber summons seeking several distinct prayers at the same time is unsustainable. Procedural ...technicalities which do not go to the substance of the application ought not be ground for dismissal of such an application. Rule 73 of the Probate and Administration Rules grants the court inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process.

Be that as it may, it is apparent that an application for confirmation of grant has already been made by the respondent. The application is dated 2nd November, 2010 respecting the grant issued on 15th July, 2010 in which the name of Isaac Mwangi Mugo, one of the original co-administrator is omitted. The original grant was issued on 6th March, 2001 in the names of the late widow of the deceased and the said Isaac Mwangi Mugo. With the passing on of the widow on the 4th July, 2002, the respondent made an application on 25th June, 2010 to be appointed a co-administrator of the estate of the deceased Joana Mugo Karanja. The name of Isaac Mwangi Mugo should have been but was not included in that application. As a result, the grant which was issued on 15th July, 2010 did not include the name of the co-administrator Isaac Mwangi Mugo. Clearly, the omission of the name of Isaac Mwangi Mugo in that second grant was an error which requires correction before the grant can be confirmed.

Invariably, the application for confirmation of grant dated 2nd November, 2010 in the sole name of the respondent must be removed.

The two administrators would not be expected to deal in any manner whatsoever with the estate property until such time that the grant is confirmed by the court. Such confirmation would be subject to the mode of distribution agreed by all the beneficiaries who are alive.

The applicant herein would be entitled to her late husband's share of the estate only when and after she has obtained the necessary grant of letters of administration respecting her late husband. At this juncture, the applicant lacks the necessary **"locus-standi"** to bring this application which cannot in the circumstances stand and is hereby dismissed for want of necessary **"locus-standi."**

However, in exercise of the powers conferred by Rule 73 of the Probate & Administration Rules, it is hereby ordered that the grant issued on 15th July, 2010 in the sole names of the respondent be and is hereby revoked and in its place, a fresh grant shall issue forthwith in the joint names of the respondent and Isaac Mwangi Mugo. Thereafter, the two may apply for confirmation thereof prior to the expiry of the stipulated six (6) months period and only after an agreement is reached between the beneficiaries with regard to the mode of distribution which should cater for the past and present defendants and/or immediate family members of the late Joana Mugo Karanja. The costs of this application be borne by each party.

Ordered accordingly.

[Read and signed this 9th day of October, 2012]

[In the presence of Mr. Nyakundi for applicant and Mr. Barongo h/b for Wanyonyi for respondent.]

J.R. KARANJA.

JUDGE.