

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

SUCCESSION CASE NO. E987 OF 2020

IN THE MATTER OF THE ESTATE OF GIOVANNI TOSONI (DECEASED)

RULING

1. What is before this court is an application by Claudio Tosoni dated 2nd July 2021 seeking orders that the court do exempt him from filing the original will of the deceased and proceed to determine the petition of letters of administration without the original will.
2. The application is brought under section 51(3) (a) of the Law of Succession Act and Rule 49 of the Probate and Administration Rules. It is grounded upon an affidavit sworn in support of the application by Claudio Tosoni on the same date. The applicant deposes that he is the only child of the deceased and that the deceased left a valid will dated 3rd December 1984.
3. He avers that he came across a letter from Archer & Wilcock Advocates dated 4th December 1984 addressed to the deceased and his mother, to which a copy of the deceased's will was attached. That the letter indicated that Mr. P.D.B. Walker, an Advocate had stored the original will in the strong room.
4. He further deposed that Mr. P.D.B. Walker has since passed away and efforts to trace the original will and find the administrators of the deceased's estate have been futile.
5. The Applicant has attached the letter from Archer and Wilcock Advocates dated 4th December 1984 and a copy of the deceased's will. According to the will the deceased bequeathed his wife Anna Concina Tosoni the entirety of his estate if he survived him for 30 days. If his wife did not survive him, he bequeathed his entire estate to his son Claudio Tosoni and appointed him as his sole executor.
6. The Applicant through his advocate Mrs. Njuguna, told this court that the advocate who drew up and stored the will has since passed away. Further that they have tried to locate the original will including going through the Law Society of Kenya to no avail.
7. I have carefully perused the pleadings filed in this matter and in view of the circumstance, I am persuaded that the deceased indeed left a will which cannot be located and the copy appended on record is authentic.
8. I hereby allow the Applicant to rely on the copy of the will herein filed, to petition for letters of grant of administration.

DATED SIGNED AND DELIVERED IN VIRTUAL COURT THIS 28TH DAY OF JANUARY 2022

.....

L.A. ACHODE

JUDGE OF THE HIGH COURT