



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 363 OF 2011
IN THE MATTER OF THE ESTATE OF RNM (DECEASED)

LWW.....APPLICANT

VERSUS

MCN.....1ST RESPONDENT

SMN.....2ND RESPONDENT

RULING

1. The deceased RNM died intestate on 25th August 2010 at the Aga Khan Hospital. The respondents MCN and SMN on 23rd February 2011 petitioned this court for the grant of letters of administration intestate. They stated that they were the widow and son, respectively, of the deceased. The deceased's other children were VWN and FCN.

2. According to the petition, the deceased's estate comprised:

- a) L.R No. xxxx Kabuku;
- b) L.R No. xxx/AXI/xxxx- Eastleigh;
- c) L.R xxxx/4- (IR xxxx/1)- Limuru;
- d) L.R xxxx/7- (IR xxxx/1)- Limuru;
- e) L.R xxxx/9- (IR xxxx/1)- Limuru;
- f) L.R xxxx/10- (IR xxxx/1)- Limuru;
- g) L.R xxxx/15- (IR xxxx/1) – Limuru;
- h) Plot No. Kijabe/Kijabe Block x/xxxx;
- i) L.R No. xxx/xx/xx Muthithi Road, Nairobi;
- j) Tigoni/Block- x/xxx - Mwana Mukia;
- k) L.R No. xxxx in Vol. xxx.xxx- Westlands, Nairobi;
- l) Ruiru East/Juja East/Block x/xxxx;
- m) vehicles KXT xxx, KQA xxx, KAJ xxxS and KAJ xxxS;

n) 8500 shares in Safaricom Ltd; and

o) Account No. 01030-xxxxxx – 00 at National Bank of Kenya, Head Office, Account No. 073xxxxxxx at Barclays Bank, Westlands and Account No. 110xxxxxxx at Kenya Commercial Bank, Limuru.

3. The grant was issued to the respondents on 20th September 2011.

4. The applicant LWW on 13th December 2017 filed the present summons dated 8th September 2017 seeking the revocation of the grant issued to the respondents on the basis that she was the deceased's widow, having married him in April 1983 under Kikuyu customary law. They got two children: RKN and RMN. She produced the certificates of birth for the children, each indicating the deceased as the father of the child. RKN was born on 30th December 1991 and RMN was born on 15th May 2000. The applicant's complaint was that her marriage to the deceased was a common matter, and yet the respondents had petitioned the court and obtained the grant, without reference to her and without her consent.

5. The applicant stated that, following the grant, the respondents had taken charge of the entire deceased's estate which they were alone benefitting from to her exclusion and her children. She sought an injunction to stop them from exclusively collecting rental income and proceeds from the property in the estate. She sought that such rental and other income from the estate be shared with them, and, lastly, sought that the respondents be ordered to provide a full and accurate inventory of the assets and liabilities of the deceased, and an account of all their dealings with the estate.

6. The applicant swore that about March 2006 she moved to the United Kingdom where she got employed, but that the marriage still subsisted as she kept in touch with the deceased.

7. The 1st respondent attacked the application. First, that the affidavit in support was materially defective because it was not notarized, having been sworn in the United Kingdom; that the affidavit had been stamped by a solicitor who had not signed it. It is, however, evident that the solicitor signed it. Secondly, the 1st respondent in her replying affidavit denied that the deceased was ever married to the applicant. She denied that her children were children of the deceased, and she required that a D.N.A. be conducted on them to prove that the deceased was their father. She stated that she was unaware of the applicant and her children at the time the petition was filed and the grant issued.

8. Although directions were given that this application be determined on the basis of the affidavits and written submissions, I have reflected on the matter and hereby review the directions and ask that the parties be heard orally so that a much more informed decision can be rendered.

9. The question whether the deceased and the applicant were married under Kikuyu customary law should be interrogated through cross-examination to establish whether indeed the marriage existed. There are children whose certificates of birth show that the deceased was their father. How did they come to be? Do the certificates support the said marriage? The respondents asked for D.N.A. to be undertaken on the children. Would that be a valuable proposal, now that a positive result would make the children beneficiaries of the estate of the deceased? Marriage is not a private event. If the applicant was indeed married to the deceased, she should be allowed to call the evidence.

10. I consider that substantive justice would be achieved to the parties if each party testifies and is cross-examined on the testimonies and affidavits. If they want to call evidence, that will be allowed.

11. Consequently, the ruling on the application is deferred until the parties have been heard orally. To enable this, each side is allowed within 60 days to file and serve any further affidavits, including witness affidavits. The matter shall be mentioned on 2nd May 2022 to take a hearing date.

DATED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 17TH JANUARY 2022.

A.O. MUCHELULE

JUDGE