



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. E1061 OF 2020

IN THE MATTER OF THE ESTATE OF JACOB OWINY AGUNDA (DECEASED)

MARY ARIENO ASOYO.....APPLICANT

VERSUS

BERYL ANYANGO OCHIENG.....RESPONDENT

RULING

1. The deceased Jacob Owiny Agunda was a Major in the Kenya Armed Forces. He died in a helicopter crash on 13th July 2020. He left a widow Beryl Anyango Ochieng (the respondent) and a daughter. It would appear not disputed that upon his death the following became payable:-

- a. compensation from GPA insurance;
- b. compensation from African Union (Amison); and
- c. death gratuity from the Department of Defence.

2. The applicant is a sergeant in the Armed Forces and was working with the deceased. She states that the deceased got a daughter with her during his lifetime, and took out an education policy with Britam which will mature in 2024. She states that the deceased was supporting this child when he was alive. Her case is that her daughter will be entitled to benefit from the above compensation.

3. In the present application dated 22nd October 2020, the applicant seeks

“grant of letters Re: Training Needs of administration pending the hearing and determination of the suit.”

She asks for the issuance to her of a special limited grant in Form 85(a) and Form 19, and the grant of temporary orders of stay of disposal, usage, administration and/or alienation of the deceased’s assets and/or estate pending the determination of the application. There was no temporary order issued and therefore I consider this prayer to be spent. If the applicant wants the stoppage of payment of compensation to the respondent, the question shall be, until when?

4. I ask the question because, there is no suit pending between the parties that would be the basis of the temporary injunction sought. No petition has been filed by the applicant or the respondent for the grant of letters of administration intestate in respect to the estate of the deceased. It would only be in such a petition that the court would have the jurisdiction to wholesomely deal with the ascertainment of the estate of the deceased, the identification of the beneficiaries of the estate and the determination of the entitlement of each beneficiary. The applicant and the respondent are assuming that if the petition were to be filed and gazetted, they would be the only persons laying a claim to the estate of the deceased.

5. Reference was made in the respondent’s counsel’s written submissions that temporary injunctions are not available in a probate and administration cause because such cause (petition) is not the ‘suit’ contemplated under **Civil Procedure Rules Act and Rules (In re Estate of Ngugi Njoroge Njuguna (Deceased) [2014]eKLR)**. My view of the matter is that, a probate and administration court may under **section**

47 of the **Law of Succession Act (Cap. 160)** and **rule 73** of the **Probate and Administration Rules** grant any order, including an order of temporary injunction, in order to protect or preserve an estate of the deceased, or regarding any matter in a succession cause, in order to do substantial justice to the parties in question.

6. The respondent's response to the application was that the deceased had no known relationship with the applicant, and neither did they have a child. She stated that the applicant and her child had no claim to the estate of the deceased. Secondly, the compensation under reference were the subject of nomination, and were therefore not part of the estate of the deceased (**In re Estate of Faith Muita (Deceased) [2016]eKLR**).

7. The court cannot "**grant letters of administration**" to the applicant because she has not filed a petition which has been gazetted, and a determination made that she is the one entitled to the grant.

8. As to whether she is entitled to a special limited grant, she needed to specify what kind of grant she was seeking and for what purpose. **Section 54** of the **Act** allows for the issuance of a special limited grant. Under **rules 12** of the **Probate and Administration Rules**:

"An application for a grant of representation to be limited in any of the several respects described in the Fifth Schedule to the Act shall be by petition in the appropriate Form and shall be supported by such evidence by affidavit in Form 19 as is required by these Rules including such evidence as is sufficient to establish the existence of the facts and circumstances relative to the particular respect in which the grant is to be limited."

9. The applicant may argue that the court should not lay emphasis on form but seek to do substantial justice to the parties (**In re Estate of Isaka Muthembwa Kithome [2008]eKLR**). However, she needed to indicate the nature of special limited grant she was seeking and indicate through evidence contained in the supporting affidavit why she required the grant. This she did not do, and therefore no discretion can be exercised in her favour.

10. In all, I find no merit in the application which I dismiss with costs.

DATED AND DELIVERED NAIROBI THIS 15TH DAY OF APRIL 2021

A.O. MUCHELULE

JUDGE