

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 921 OF 2014

IN THE MATTER OF THE ESTATE OF NATHAN MOLENJE MILUNE (DECEASED)

JUDGMENT

1. According to certificate of death, dated 2nd September 2014, serial number xxxx, the deceased person, the subject of these proceedings, died on 18th July 2014. There is a letter on record, dated 16th September 2014, from the Chief of Mahira Location, which indicates that the deceased was survived by a widow, named as Grace Nasimiyu Molenje. No other survivors are disclosed in that letter.
2. Representation to the estate of the deceased was sought by the said widow, vide a petition that she filed herein on 31st October 2014. In her affidavit in support of the petition, she has listed herself and six daughters as the survivors of the deceased. The surviving daughters are said to be Janet B. Molenje, Nancy E. Molenje, Christine R. Molenje, Gertrude S. Molenje, Rachael M. Molenje and Robin N. Molenje. The deceased was said to have had money held in a bank account in an undisclosed bank. Letters of administration intestate, in those terms, were made on 28th May 2015, and a grant duly issued on 2nd June 2015. I shall hereafter refer to her as the administratrix.
3. What I am called upon to determine, is a summons for revocation of the grant made on 28th May 2015. That application is dated 20th July 2015. It is brought at the instance of Florence Muhonja Kiyesi. She complains that the proceedings to obtain the grant were carried out secretly, were defective in substance, and fraudulent and founded on falsehood. She states that she had her children were left out, yet she was the first widow of the deceased, having married him under statute. She avers that the survivors of the deceased were two widows, being herself and the administratrix, and their children. She lists her own children as Newton Molenje, Elly Sadaka Molenje, Linet Mutashi Molenje and Kessinger Molenje; while the children of the administratrix are the six daughters listed in the petition. She would like the grant revoked, and any transactions on the estate nullified. The applicant has attached a certificate of marriage, serial number xxxxx, showing that she and the deceased solemnized marriage at the District Commissioner's Office at Kakamega, on some unknown date. I shall refer to Florence Muhonja Kiyesi hereafter as the applicant
4. The administratrix swore an affidavit 19th October 2015, which was filed herein on even date, in reply. She asserts to be the only lawfully recognized widow of the deceased, having married the deceased in 1975 under Luhya customary law. She avers that the customary law marriage was later solemnized, and a certificate of marriage issued. She avers that the applicant had been married earlier, but she had deserted the marriage in 1976. She avers that the applicant subsequently got married severally to other men thereafter. She avers that she took care of her own children, and those that the applicant had abandoned before she deserted the marriage. A certificate of marriage dated 19th May 1997 is attached to show that the administratrix and the deceased solemnized their marriage on 19th May 1997 at the Office of Registrar of Marriages at Kakamega.
5. The case was heard orally. The case for the applicant opened on 19th March 2018. She asserted that she was the statutory wife of the deceased based on her certificate of marriage. She said that she was separated from the deceased in 1974, although they never divorced. She said that he was buried at the compound of the administratrix. She conceded that she had a man friend in Kapkangani, but that man never was her husband. She conceded that the deceased had given the name of the administratrix to Teachers Service Commission as the next of kin, and had conducted a civil marriage with the administratrix. Zedekaya Molenje testified next. He asserted that the two women were wives of the deceased, and that they had all had children with the deceased. He said that there was no divorce. Elijah Kinyusi Keyesi followed. He identified both women as wives of the deceased, saying that there was no divorce.
6. The case for the administratrix opened on 13th March 2019. She stated that she got married in 1975, and the applicant left in 1976, never to come back. She said that she did not know whether the deceased ever divorced the applicant. The fact that there was no dissolution of marriage between the applicant and the deceased was echoed by John Makokha.
7. At the close of the oral hearings, there were directions for filing of written submissions. There has been compliance. I have read through the written submissions, and noted the arguments made.
8. To me the matter is fairly straightforward, and there will be no need to belabour the point. The deceased had two wives. The applicant was the first in time. The two were said to have had a customary and statutory marriage, which was followed by separation, but there is no evidence of divorce. That would mean that as at the date of death, she was still a wife of the deceased. She survived him, and she should have been involved in the process of obtaining representation to the estate of the deceased. The administratrix concedes that she took care of the children of the applicant. Curiously, she did not list them in her petition as survivors of the deceased, raising questions on her *bona fides*.
9. I shall accordingly allow the application dated 20th July 2015. The grant made on 28th May 2015 is hereby revoked. I appoint Grace Nasimiyu Molenje and Florence Muhonja Kiyesi, administratrices of the intestate estate of the deceased. The two administratrices shall move the court with due dispatch for confirmation of their joint grant, in which they shall make provision for all the children of the deceased. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 29TH DAY OF OCTOBER 2021

W. MUSYOKA

JUDGE