



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 311 OF 2013**

**IN THE MATTER OF THE ESTATE OF ADAM KHALIFA (DECEASED)**

**MAIMUNA AHMED.....APPLICANT**

**VERSUS**

**AHMED ADAM.....PETITIONER/RESPONDENT**

**RULING**

1. The deceased Adam Khalifa died intestate in 1961 in Mazeras in Kilifi County. He had three children (Fatuma Adam, Ali Adam and Habiba Adam) who died without families. His estate comprised LR No. 1043/111/24. On 14<sup>th</sup> February 2013 Ahmed Adam petitioned for the grant of letters of administration intestate. The grant was issued to him on 12<sup>th</sup> September 2013, and confirmed on 24<sup>th</sup> September 2014. The parcel of land went to him. He has since sold it to Greenbelt Warehouse Limited for Kshs.20,000,000/=.

2. The present application dated 4<sup>th</sup> May 2020 by the applicant Maimuna Ahmed seeks the revocation of the certificate of confirmation issued to the petitioner on 24<sup>th</sup> September 2014. She did not seek the revocation of the grant of letters of administration intestate. In the grounds and the supporting affidavit, the applicant alleged that the petitioner was neither the son nor a relative of the deceased, and was therefore neither entitled to petition for the grant nor to inherit the estate of the deceased. Her complaint was that the petitioner had by way of fraud and concealment of material facts inherited the estate of the deceased. She stated that it was fraudulent for the petitioner to petition this court instead of petitioning the court at Kilifi or Malindi where the deceased hailed from and where the estate is situated. She indicated that she was daughter of the late Ahmed Mohamed who was the first cousin of the deceased. Now that the deceased's children had died without leaving families, she stated, she and her brothers were the ones entitled to inherit the estate of the deceased. She complained that the petitioner had not named her and her brothers in the petition, and had not got them to participate in the proceedings leading to his inheriting the estate of the deceased.

3. One of the brothers of the applicant is Ibrahim Ahmed. By application dated 31<sup>st</sup> October 2017, he sought the revocation of the grant issued to the petitioner on 12<sup>th</sup> September 2013, and confirmed on 24<sup>th</sup> September 2014. The application was opposed by the petitioner. The dispute was orally heard by Justice A. Ongeru who on 21<sup>st</sup> February 2020 delivered a ruling dismissing it with no orders as to costs. It was found that the applicant's brother had not demonstrated his relationship to the deceased, and neither had he shown that he had a claim to the property comprising the estate of the deceased. The court found that the petitioner had proved that he was entitled to the grant and to the property of the deceased. It is notable that the present application was brought soon after the dismissal of the applicant's brother's application.

4. It is on the basis of the hearing and dismissal of the applicant's brother's application for revocation that the petitioner through a preliminary objection and grounds of opposition dated 22<sup>nd</sup> May 2020 indicated that the present application is *res-judicata*.

5. I note that following the death of the petitioner, Hanter Adam took over the matter and opposed the application as indicated above. He also filed a replying affidavit.

6. The applicant has not explained why it took her about seven years to challenge the grant that was issued to the petitioner. From her supporting affidavit it is clear that she was aware of the petition and the subsequent proceedings. She has not indicated why she did not join her brother in his application for the revocation of the grant.

7. Secondly, it is clear from the ruling delivered on 21<sup>st</sup> February 2020 that the applicant and her brothers had not shown their relationship to the deceased, and neither had they proved their claim to the estate of the deceased. That being the case, I find that the family cannot be allowed to re-litigate the same issues through the present application dated 4<sup>th</sup> May 2020 brought by the applicant. The applicant is estopped by the principal of *res-judicata* from bringing the instant application.

8. Under **section 7 of the Civil Procedure Act**, the issues in the present application were directly and substantially in issue in the application dated 31<sup>st</sup> October 2017; the former application and the present application are both over the estate of the deceased; both applications are about whether or not the petitioner obtained a good grant; the applications are about whether or not the family of the applicant was entitled to the estate of the deceased; the former application and the present application are against the petitioner; and the former application was heard by a competent court on merits on the issues and finally decided. On the basis of the **section** and decided cases (including **Kenya Commercial Bank Ltd – Benjoh Amalgamated Limited [2017]eKLR** and **IEBC –v- Maina Kiai & 5 Others [2017]eKLR**), I find that

the application is *res-judicata*.

9. It is important to add that the parcel subject of the dispute has been sold to a third party who was not joined in the application.

10. In the final analysis, I allow the preliminary objection by the petitioner and dismiss the application by the applicant with costs.

**DATED and DELIVERED at NAIROBI this 28<sup>TH</sup> JULY 2020**

**A.O. MUCHELULE**

**JUDGE**