



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

SUCCESSION CAUSE NO. 1173 of 2014

IN THE MATTER OF THE ESTATE OF WAA

AND

IN THE MATTER OF THE ESTATE OF ROA (MINOR)

BETWEEN

BOO.....APPLICANT

AND

KAA.....RESPONDENT

RULING

1. The deceased to whose Estate these proceedings relate died on 9th March, 2012 while domiciled in Kenya. Limited Grant of Letters of Administration *Ad Litem* Letters were issued to her widower **BOO**, (the Respondent), on 23rd January, 2015 for the purposes only for filing suit.
2. On 20th May, 2016, the respondent filed **Kisumu Chief Magistrate's Civil Case No. 116 of 2015**, on his own behalf and on behalf of the deceased's daughter **ROA** (the child), seeking damages arising out of the deceased's death.
3. By a ruling delivered on 27th June 2016, this court ruled that the *Ad Litem* grant shall issue to the person who shall be granted custody of the child in **Kisumu Children's Court Case No. 19 of 2015**.
4. Subsequently, by a judgment delivered on 5th June 2017 in **Kisumu Children's Court Case No. 19 of 2015**, the court dismissed **KAA's** (the applicant) suit seeking legal custody of the child and granted custody to Agape Children's Ministry.
5. By an order dated 5th October, 2018 issued in **Kisumu Children's Court Case No. 19 of 2015**, the court reviewed its order dated 5th June 2017 and granted the custody of the minor together with full parental rights and obligations to the applicant.

Application

6. The order of review issued on 5th October, 2018 in **Kisumu Children's Court Case No. 19 of 2015** prompted the applicant to file a chamber summons dated 12th October, 2018, which is the subject of this ruling seeking the following orders:

1. That the court do review and/or set aside its orders of 25th January, 2018 issuing Ad-Litem grant to Agape Children's Ministry
2. That the Ad-Litem grant be issued to the Applicant

7. The application is based on grounds among others that custody of the minor together with full parental rights and obligations had been granted to the applicant.

8. The application is also supported by an affidavit sworn by the Applicant on 12th October, 2018 in which he reiterates the grounds on the face of the application. Annexed to the affidavit is an order dated 5th October, 2018 in which the court **Kisumu Children's Court Case No.**

19 of 2015 granted the custody of the minor together with full parental rights and obligations to the applicant and a letter dated 13.3.17 in which Agape Children's Ministry recommended that custody of the minor be granted to the Applicant.

9. I have considered the application in the light of the supporting affidavit, annexures thereto. This application seeks to give effect to this court's order issued on 27th June 2016 to the effect that the *Ad Litem* grant in this matter shall issue to the person who shall be granted custody of the child in **Kisumu Children's Court Case No. 19 of 2015**. Custody has already been granted to the Applicant and it therefore follows that the *Ad Litem* grant should issue to him.

Disposition

Consequently, the chamber summons dated 12th October, 2018 is allowed in the following terms:

- 1. This court hereby reviews its orders dated 25th January, 2018 issuing Ad-Litem grant to Agape Children's Ministry**
- 2. That the Ad-Litem grant be issued to the Applicant**
- 3. No order as to costs**

DELIVERED AND SIGNED IN KISUMU THIS 20TH DAY OF DECEMBER 2018

T. W. CHERERE

JUDGE

In the presence of:

Court Assistant - Felix

Applicant -Mr Bagada/Ochieng

Respondent -Ms Mwolo