



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO.511 OF 2013

IN THE MATTER OF THE ESTATE OF THE MARGARET WANJIRU KARENJU – (DECEASED)

BENARD MWANGI MURIITHI.....APPLICANT

VERSUS

VIRGINIA MUTHONI KARENJU.....PETITIONER

RULING

INTRODUCTION

1. This ruling is in respect of the notice of motion dated 20th June, 2016. Virginia Muthoni Karenju through that motion seeks orders:

1. Spent
2. Spent
3. That the court be pleased to review the orders of the Hon. Justice A. K. Ndungu, made on 11th May, 2016 pending the hearing and determination of this application.
4. That the orders made by Hon. A.K. Ndungu on 11th May, 2016 be reviewed and set aside.
5. That costs of this application be provided for.
6. That such further and other relief be granted to the Applicants as this court deems fit and expedient in the circumstances.

THE APPLICANT'S CASE

2. Through five (5) grounds and her supporting affidavit, the applicant's case is that this court vide its orders of 11th May, 2016 appointed Benard Mwangi Mureithi (hereinafter the respondent) as the sole administrator of the estate of the deceased. It is averred that the applicant is entitled to be a joint administrator being a beneficiary of the estate.

3. It is urged that the respondent was convinced that the deceased Margaret Wanjiru Karenju and the respondent were never married customarily or in any other form of marriage under the Marriage Act.

4. It is feared that the issuance of the grant of letters of administration solely to the respondent gives him unfettered discretion to administer the estate.

5. The applicant is aggrieved that the orders of court have considerable ramifications and if not reviewed will greatly cause injustice to the applicant.

THE RESPONDENT'S CASE

6. Despite existence of evidence of proper service, the application elicited no response from the respondent.

ANALYSIS AND DETERMINATION

7. The application herein is premised on **Sections 80, 63(e)** and **3A** of the **Civil Procedure Act** and under **Order 45 Rule 1** of the **Civil Procedure Rules**.

8. Am unable to comprehend the relevance of the reliance on **Section 63** of the **Civil Procedure Act**. **Section 80** of the **Civil Procedure Act** provides as follows:

“Any person who considers himself aggrieved:

(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is allowed by this Act may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

9. **Order 45 rule 1** provides:

“1(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed, any who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

10. I have applied my mind to the instant application. The applicant falls short of achieving the threshold for a review of the court's orders for the following reasons:

i. There is no discovery of new and important matter or and important matter or evidence which after due diligence was not within the knowledge of the applicant or could not be produced by her at the time the orders were made.

ii. There is no mistake or error apparent on the face of the record.

iii. There is no other sufficient reason shown.

11. In essence the applicant disagrees with the findings of the court. The only open avenue for redress would be through an appeal against the orders.

12. It is worth noting that appointment as an administrator is a fiduciary duty. It is not true that once one is appointed as an administrator of the estate of a deceased person he/she has unfettered discretion to deal with the estate.

13. The duties of an administrator are summarized in **Section 83** of the **Law of Succession Act** as follows:

“83. Personal representatives shall have the following duties:

(a) to provide and pay, out of the estate of the deceased, the expenses of a reasonable funeral for him;

(b) to get in all free property of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty if any);

(c) to pay, out of the estate of the deceased, all expenses or obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);

(d) to ascertain and pay, out of the estate of the deceased, all his debts;

(e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;

(f) subject to Section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interest therein under the Will or on intestacy as the case may be;

(g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, complete the

administration of the estate in respect of all matters other than continuing trust, and to produce to the court a full and accurate account of the completed administration.

(h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;

(i) to complete the administration of the estate in respect of all matters other than continuing trust and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.”

14. It follows then, that the applicant can raise any claim to the estate as a beneficiary to the administrator and should the administrator fail to consider her for a provision, that provides the avenues through which the applicant can enforce her rights.

15. On the whole, the application for a review herein is unmerited. The same is dismissed. This being a family matter, each party to bear their own costs.

Dated, Signed and Delivered at Nakuru this 22nd day of March, 2017.

A. K. NDUNG'U

JUDGE