



REPUBLIC OF KENYA
IN THE HIGH COURT KENYA AT MERU
SUCCESSION CAUSE NO. 185 OF 2015

IN THE MATTER OF THE ESTATE OF THE LATE NAAMAN KAUME THIRINGI -
DECEASED

ROSE MBAAH KAUME.....1ST PETITIONER
GEORGE KINOTI THIRINGI.....2ND PETITIONER
NAOMI KANANU KAUME.....3RD PETITIONER
EN.....4TH PETITIONER

VERSUS

ELIZABETH MBETI KAUME..... APPLICANT

RULING

Application dated 28th April 2016 was filed by Elizabeth Mbeti Kaume seeking that EN be removed as one of the Administrators to the estate of the late Naaman Thiringi Kaume.

That the applicant claimed that is a stranger to the estate having been divorced by the deceased in Meru Principal Magistrates Court Divorce No. 2 of 1974. Applicant claimed that since the divorce proceedings were determined EN had lived separately from the deceased since 1975 and was remarried to one Raymond Buuri with whom she sired a child namely CK. She annexed the Divorce Cause proceedings as well as certificate of birth of the said CK. It was argued in applicant's affidavit that EN had for the last 40 years lived separately from the deceased and therefore not entitled to inherit from the deceased and again from her 2nd husband RBR.

EN is opposing application denied she was divorced from the deceased and in any case if the proceedings annexed to the application are true record of the court, then such divorce was never complete as no Decree Absolute was issued.

She argued that applicant marriage to the deceased was illegal as her marriage was still subsisting. She denied having married RB and that she only sired a child with him out of wedlock. She argued that the application was brought so as to delay the determination of the cause. Mr Murango Advocate for the applicant filed written submissions in support of the application and relied on Section 66 of the Law of Succession Act and the Authority in JLM vs. JJ – High Court Succession cause No. 82 of 2012 at Kitale where Justice JR Karanja held:

“In the circumstances, this court must find and does hereby finds that the applicant is a

divorced wife of the deceased and would have no right to the estate of the deceased, although her children with the deceased would benefit from the estate.”

I have perused the file herein and it appears party have concentrated more in filing applications rather than have substance of the cause adjudicated upon. As it stands now applications dated 21st January 2016 is still pending before court for prosecution and determination. In Hon Justice Gikonyo’s ruling in application dated 23rd July 2015 that was delivered on 11th April 2016, we referred to the issue of 4th petitioners status thus:-

“ I have carefully considered that one of the objections is that the 4th petitioner was divorced from the deceased. Towards that end court have said time and again and I will repeat it were that, parties should always understand that being an administrator does not place you on a vantage position over the other beneficiaries. In fact as an administrator you bear a legal hand to administer the estate in accordance with the law and failure to do so may attract sanctions or penalties.

Again an administrator need not be a beneficiary. Therefore there is no cause for alarm because status as a spouse of the deceased or beneficiary and the entitlement of the 4th petitioner will be one of the issues that I shall determine within the confirmation proceedings.”

The parties were then given 14 days to file application for confirmation and supporting affidavits either jointly or separately.

That has not been done since 11th April 2016. No appeal has been hedged against the ruling rendered by Hon Justice Gikonyo and no explanation is given why directions given were not followed to have this matter determined once and for all.

I do find that the applicants’ application and prayers are same ones that Justice Gikonyo rendered himself on in the ruling of 11th April 2016 and therefore can’t be litigated upon again.

The annexed copy of proceedings in Divorce cause No. 2 of 1974 are not certified so that the court can take them as authentic and it is therefore necessary that evidence is called to prove that the divorce which 4th petitioner has claimed took place. 4th petitioner has a right to be heard as the matter to verify the authenticity of the proceedings.

If in the cause of these proceedings it is established that EN was divorced from the deceased prior to his death then for the purposes of the rules of intestacy she will have no rights to the intestate estate save where she is able to prove she was dependant on the deceased.

Immediately prior to his death as per definition of Section 29 of the Law of Succession Act. The prayers in the application are therefore not ripe for disposal and parties should hasten to take steps that were directed by Hon Justice Gikonyo in his ruling delivered on 11.4.2016. It is so ordered.

Ruling Signed, Delivered and Dated this 27th Day of April 2017.

HON. A.ONG’INJO

JUDGE