



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 1371 OF 2012
IN THE MATTER OF THE ESTATE OF ADAMA DIAWARA (DECEASED)

RULING

1. Adama Diawara hereinafter referred to as the deceased died on the 29th of August 2011. Esther Wambui Njoroge his widow and H D his daughter petitioned for a letters of administration ad litem on the 28th of June 2012. On the 13th December 2012 the 2 petitioners filed a petition for letters of administration intestate. In their affidavit of support they state that the deceased left the following persons surviving him;

- i. Esther Wambui Njoroge- Widow
- ii. Maferiwa Diawara- Daughter
- iii. Kaba Diawara- Son
- iv. Mah Diawara- Daughter
- v. H D - Daughter
- vi. Assetou Diawara- Daughter

2. A notice of amendment of the application for grant was filed by the petitioners on the 29th October 2013 to include other names of beneficiaries namely; Amar Wambui, Faiser Wambui, and Aika Wambui his granddaughters and Swabi Adama Diawara his grandson. As per the said notice the deceased's list of assets and liabilities are listed as follows;-

- i. Kshs. 2,607,918.00 in the deceased personal account no. [particulars withheld], Queensway Branch, Nairobi
- ii. Kshs. 2,607,918.00 in the Gallery Watatu Limited Account No. [particulars withheld], Queensway Branch, Nairobi.
- iii. Kshs. 26 million held by m/s Simani & Company Advocates being the deceased sales proceeds from the sale of Land reference Number [particulars withheld], Grant No. IR [particulars withheld], Peponi Property.
- iv. The deceased Art Collection unlawfully held by Mr. Koffie Osei, a Ghanian.
- v. Property at House No. [particulars withheld], on Land Reference Number 209/[particulars

withheld], Eagle Plains Estate.

vi. An Apartment at Cocody, Abidjan, Cote D'Ivoire.

vii. A developed plot in Abobo Estate, Abidjan.

viii. The deceased interest in Santa Barbara, USA that includes two beach villages.

Total Estimated Valued -----Kshs.600,000.00

Liabilities

i. African Centre Limited offices rent arrears amounting to Kshs. 178,000.00

ii. School fees arrears amounting to Kshs. 235,000.00

iii. Family upkeep, legal fees and maintenance approximately Kshs. 650,000.00

Total Estimated Value -----Kshs. 1,063,000

3. On the 10th of June 2014 a grant of letters of administration intestate was issued to Esther Wambui Njoroge and H D. The petitioners on the 9th of September 2014 filed a petition for a special grant for purposes of withdrawing Kshs. 255,400.00 money from the estate account held at Barclays Bank. In the affidavit to support the Special Limited Grant the administrators aver that the said sum is for school fees arrears. That during the deceased's life time and immediately prior to the deceased's untimely death, he was responsible for the upkeep and payment of school fees for his grandchildren and dependants of the estate namely; Amal Wambui Mithamo, Faizzer Wambui, Aika Wanjiru and Swabir Adama Diawara.

4. On the 10th of November 2014 Lucy Muthoni Ndungu the mother and next friend of Michelle Wambui Diawara filed a Summons for Revocation of Grant dated the 5th November 2014. Her claim is that the applicant is a minor daughter of the deceased born on the 6th of August 2001 and that the administrators failed to disclose in the petition that the applicant is a beneficiary to the estate of the deceased.

5. On the 16th of December 2014 Adama Diawara filed a Notice of Motion dated the 15th of December 2014. He seeks injunctive orders to restrain the respondents from disposing, liquidating or distributing the assets of the deceased's estate. Simultaneously the applicant filed a Summons for Revocation/Annulment of grant dated 15th December 2014 seeking to have the grant issued to the administrators on the 10th of June 2014 revoked. In his supporting affidavit he claims that he together with his sibling Adama Diawara JR are children of the deceased and that their mother Comfort Skerk Assabil having been married to the deceased also qualifies as a beneficiary to the estate. He claims that they have been omitted from the list of beneficiaries in the petition.

6. On the 18th January 2016 Michelle Diawara through her advocate Mwaniki Gachoka filed a chamber summons dated 14th January 2016. He seeks orders that ;

i. That the administrators of the estate of Adama Diawara be directed to immediately pay from the estate to the Aga Khan Academy Nairobi Kshs. 211,200 being school fees and lunch fee for term one, 2016 owed by Michelle Diawara.

ii. That the administrators of the estate of Adama Diawara be directed to pay from the estate all subsequent school fees and other school expenses becoming due and payable by Michelle Diawara until the completion of her education.

iii. That any other charges related to her learning at the school be paid by the administrators of the

estate in time.

7. On the 27th March 2017 Mr. Mugoye for the petitioner and Mr. Gachoka for Michelle Wambui Diawara argued their applications dated 9th September 2014 and 14th January 2016. The applications were opposed by the respondent/applicant who filed the application dated 15th December 2014. Having considered the oral submissions the two applications and noting that there is an application pending for revocation it is my view that the two applications need not be dealt with at this stage. The two applicants claim to be beneficiaries and were dependant on the deceased yet the applications were filed in 2014 and 2016. The applicants have not explained how they have paid fees from the date the deceased passed on. It is upon the administrators to wind up the estate of the deceased. What they are seeking to do is to administer the estate of the deceased in piecemeal for which this court will not encourage or allow. I agree with Mr. Mbichire submission that the application for revocation of the grant should be heard first before the estate can be administered in order to determine who the beneficiaries are. I therefore decline to grant the prayers sought in the two applications and direct as follows;

- i. The court shall give directions on the hearing of the application dated 15th December 2014 within 30 days from the date hereof.
- ii. Once directions are given the parties shall proceed to take a hearing date for the said application.
- iii. Meanwhile the two administrators are restrained from disposing of, liquidating or distributing the assets of the estate of the deceased Adama Diawara. This order is given in order to preserve the estate of the deceased.
- iv. Parties are also at liberty to go for Court Annexed Mediation on the issue of who are the genuine beneficiaries to the deceased's estate. In the event there is a settlement on the said issue then the administrators can proceed to file an application for confirmation of the grant.
- v. No orders as to costs. It is so ordered .

Dated, signed and delivered this 29th Day of **August 2017**

R. E. OUGO

JUDGE

In the Presence of:

Miss Waithera h/b for Mr. Mugoye For the Administrators

Miss Kogai h/b for Mr. Gachoka For the Applicant

Respondent/Applicant Absent

Ms. Charity Court Clerk