

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 1629 OF 2012

IN THE MATTER OF THE ESTATE OF A W N (DECEASED)

RULING

1. The deceased herein died on 12th March 2012. According to a letter from the Chief of Kiambaa Location dated 24th May 2012, he was survived by a widower, B S, and two minor children, F and L. Representation to the estate was sought by the widower and Keval Vora, and a grant of letters of administration intestate was made to them vide a grant of letters of administration intestate dated 30th November 2012. According to the petition lodged herein, she was said to have died possessed of two motor vehicles – registration mark and numbers [Particulars withheld] , and money in two bank accounts.

2. The administrators filed an application on 23rd July 2013, dated 11th July 2013, seeking confirmation of their grant. They listed the two motor vehicles named above, the money in the two accounts, and a third motor vehicle, being registration mark and number [Particulars withheld]. They explained in their supporting affidavit that the said third motor vehicle had been charged with a bank to secure a facility and that the bank needed the grant confirmed to facilitate the unencumbering of the vehicle.

3. The filing of that summons prompted the filing of a summons general by Phillis Wairimu Githae, dated 10th September 2013, who alleged to be the actual owner of [Particulars withheld]. She alleged that she had gotten into an arrangement with the deceased to have her use it as a security to obtain a loan facility to buy another car. That was allegedly done, and the deceased bought [Particulars withheld]. The deceased died before [Particulars withheld] could be replaced as security, and shortly thereafter the motor vehicle was stolen while in the possession of the applicant. It was later found in the possession of another person, who purported to have had bought it from the owner, and the vehicle was then detained at a police station. The applicant sought to be enjoined to the succession cause, to be declared beneficial owner of the said motor vehicle, and for the administrators to be directed to set aside the motor vehicle and to transfer ownership thereof to her.

4. The application dated 10th September 2013 was placed before Kimaru J. on 30th September 2013, and the applicant, Phillis Wairimu Githae, was granted leave to lay her claim to [Particulars withheld] during the hearing of the application for confirmation of the grant which was scheduled for 29th October 2013. The confirmation application, dated 11th July 2013, was heard on 16th June 2014. It was recorded by consent that [Particulars withheld] be included in the assets that made up the estate of the deceased, and upon confirmation of the grant the said motor vehicle be inherited by Phillis Wairimu Githae. The grant was confirmed in those terms, and a certificate of confirmation of grant duly issued on 16th June 2014, indicating the devolution of the said motor vehicle to Phillis Wairimu Githae.

5. On 11th August 2014, Phillis Wairimu Githae, lodged an application herein dated 7th August 2014, mounted on the certificate of confirmation of grant dated 16th June 2014, arguing that as the grant had been confirmed, the succession cause was at an end, and that as the motor vehicle [Particulars withheld] had been devolved to her as per the certificate of confirmation of grant, the same ought to be released to her from the police station where it had remained impounded. That application was placed before me on 12th August 2014, when I directed that the same be served on all the parties, including the officer commanding the relevant police station, and that the matter be heard on 2nd September 2014. Come 2nd September 2014, the parties resolved the application by consent, to the effect that the said motor vehicle

be released to Phillis Wairimu Githae.

6. The application that I am now called upon to determine followed thereafter. It is dated 8th December 2014. It seeks review of the orders made by Kimaru J on 16th June 2014 at the confirmation of the grant and the orders that I made on 2nd September 2014 ordering the release of the motor vehicle to Phillis Wairimu Githae as per the certificate of confirmation of grant issued pursuant to the orders made on 16th June 2014. It is brought at the instance of Elijah Kuria Waithaka, who alleges that he, and not Phillis Wairimu Githae, was the owner of [Particulars withheld], having acquired the same from the deceased. He urges that the proceedings of 16th June 2014 prejudice his rights to the vehicle, and ought to be reviewed. He has attached documents to his affidavit to support his case.

7. The matter was placed before Ougo J. on 14th February 2017, who gave directions on service thereof and that the same be placed before me for hearing. The same was served, and the only response to it was a notice of preliminary objection on a point of law. I directed that the preliminary point be disposed of by way of written submissions. There has been compliance for the parties have filed detailed written submissions.

8. I have read through the submissions and noted the arguments made. This is a family matter. I have noted that the applicant claims to have had bought the motor vehicle in question from the deceased, which motor vehicle is also claimed by Phillis Wairimu Githae, who says that she had given it to the deceased to use one way or the other. The court should help the parties find the truth so that all the questions or issues raised are laid to rest. Technical maneuvering should not be allowed to obscure the path to the truth and justice.

9. Consequently, as a way forward for the parties. I shall order as follows –

[a] That the applicant, Elijah Kuria Waithaka, is hereby enjoined to these proceedings as interested party for the purpose of the prosecution of his application dated 8th December 2014;

[b] That administrators herein, B S and Keval Vora, and Phillis Wairimu Githae are hereby directed to file their respective replies to the application dated 8th December 2014 within fourteen (14) days of the date of this ruling;

[c] That in the meantime Phillis Wairimu Githae shall not sell, gift, charge, lease or in any way part with possession of motor vehicle registration mark and number [Particulars withheld] pending the hearing and disposal of the application dated 8th December 2014; and

[d] That the matter shall be mentioned after fourteen (14) days of the date herein for the purpose of giving directions on the disposal of the application dated 8th December 2014.

DATED, SIGNED and DELIVERED at NAIROBI this 8TH DAY OF DECEMBER, 2017.

W. MUSYOKA

JUDGE