



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
SUCCESSION CAUSE NO.291 OF 2014
IN THE MATTER OF THE ESTATE OF GEORGE KIREU OWUOR – DECEASED

P A O.....PETITIONER

VERSUS

C A O.....APPLICANT

RULING

1. The application before me is the one dated 23rd October, 2014 brought by the applicant under **Section 51, 55, 58 and 66 of the Law of Succession Act** under the title – **“summons for leave by C A O to apply and or be included as a co-petitioner in the administration of the estate of G K O (Deceased) who died on 6th April, 2013.** It is not in dispute that the deceased had 2 wives, the petitioner herein, P A O and the applicant C A O . The deceased was also survived by children as shown in form P&A 5 forming the documents filed in the application for grant of letters of administration.

2. The petitioner petitioned for and is yet to be issued with the grant of Letters of Administration intestate.

3. The applicant has field the instant application seeking for orders as follows:

1. This honourable court to order that, C A O , the applicant herein a second widow of the above named G K O be granted leave to apply and/or be included as a co-petitioner in the proceedings to obtain the grant IN THE MATTER OF THE ESTATE OF G K O (DECEASED) IN SUBSTANCE.

2. This honourable court to grant stop order on payment and/or transaction of the estate of the deceased particularly monies at the public trust Kisii and/or bank account no. [particulars withheld] National bank of Kenya Awendo branch and/or the land parcel nos. K/KANYAWANGA/[particulars withheld] AND K/KANYAWANGA/[particulars withheld] never be distributed/released to anyone until the issues over the deceased estate are resolved, as these comprising of the ancestral land and death gratuity.

3. Any other relief the honourable court may deem fit.

4. That the costs of the application be in cause.

4. The application is premised on the grounds on the body of the application and the supporting affidavit

of the applicant sworn on 23rd October 2014 in which she complains of being left out of the succession proceedings as her consent as a widow and a beneficiary of the estate was not sought prior to the filing of the petition. She further complains of being excluded as a co-administrator of the estate contrary to the provisions of the Law of Succession Act despite the fact that she ranks in equal priority with the petitioner being a widow of the deceased. The applicant depones that she is suspicious of the petitioner's intentions in these proceedings since her (Applicants) own earlier attempts to petition for Grant of Letters of Administration were frustrated by the petitioner.

5. A perusal of the court file does not show if the respondent/petitioner filed any replying affidavit in opposition to the application despite the fact that M/s S. O. Omwega & Co Advocates filed a notice of appointment as advocates for the petitioner on 10th February, 2015. The petitioner has however alluded to a replying affidavit in her submissions filed in court.

6. Be that as it may, on 12th October, 2015, parties agreed to canvass the application by way of written submissions. Both the petitioner and respondent filed their submissions on 3rd December 2015.

7. The applicant's submissions has expounded on the provisions of **Sections 51, 55, 58 and 66 of the Law of Succession Act.**

The applicant contends that the law allows her to be a co-petitioner and joint administration with the petitioner by virtue of the fact that she ranks in equal priority with the petitioner as they are both the legitimate widows of the deceased. Furthermore, the applicant argues that **section 58 of the Law of succession Act** provides for the appointment of at least 2 administrators where a continuing trust arises such as is the case in the instant estate.

8. The applicant has relied on the following authorities in support of her submissions: **Veronica Mwikali Mwangangi vs Daniel Kylo Musyoka 2005, Estate of Aggrey Makanga Wamira HCCC NO. 39 of 1996 and Re. Kibiego (1972) E.A 179.**

9. The petitioner's submissions contain a denial of all the allegations levelled against her by the applicant and an undertaking by the petitioner to honestly and truthfully administer the estate of the deceased if grant is made to her.

Determination

10. I have perused the court file and noted that even though the applicant is listed as a widow in form P&A5 under the list of the deceased's survivors, she still complains of having been left in the dark in as far as the administration of the estate is concerned. The issues raised by the applicant, in my view, are general suspicions that normally occur among competing co-wives even after the death of their husband.

11. Be that as it may, the law provides under **Section 58 of the Law of Succession Act**, for the appointment of 2 administrators where there is a continuing trust, as is the case in the instant succession cause. The said **Section 58 provides** as follows:

“(1) Where a continuing trust arises—

(a) no grant of letters of administration in respect of an intestate estate shall be made to one person alone except where that person is the Public Trustee or a Trust Corporation;

(b) no grant of letters of administration with the will annexed shall be made to one person alone except where—

(i) that person is the Public Trustee or a Trust Corporation, or

(ii) in the will the testator has appointed one or more trustees for the continuing trust who are

willing and able to act.

(2) Where an application for a grant of letters of administration in respect of an intestate estate is made by one person alone and a continuing trust arises the court shall, subject to section 66, appoint as administrators the applicant and not less than one or more than three persons.”

Section 66 of the Law of Succession Act provides as follows:

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom

a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

(a) surviving spouse or spouses, with or without association of other beneficiaries;

(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

(c) the Public Trustee; and

(d) creditors: Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.”

12. My humble view is that this is the kind of application where parties ought to have agreed to incorporate the applicant a co administrator of the deceased in order to fast track the case and in order to deal with the more crucial bit of the case which is the distribution of the estate of the deceased to all the deserving beneficiaries.

13. It is at the point of the distribution of the estate that questions or allegations raised by the petitioner that some children are not the children of the deceased shall be tackled.

14. It is my opinion that including the applicant in the administration of the estate will dispel the fears and suspicions that may arise between the parties when one party feels left out of the proceedings or the thick of things as it were.

15. In the end, I allow the applicant’s application dated 23rd October, 2014. Each party shall bear their own costs.

Dated, signed and delivered in open court this 19th day of April, 2016

HON. W. A OKWANY

JUDGE

In the presence of:

- Mr. Ochwangi for Nyatundo for the applicant
- Mr. Nyagesoa for Omwenga for the respondent.

- Omwoyo: court clerk