

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

IN THE MATTER OF THE ESTATE OF HANNAH WANJIRU (DECEASED)

SUCCESSION CAUSE NO. 884 OF 2010

RULING

1. The application for determination is the Motion dated 31st December 2012. It seeks review of orders that had been made herein on 3rd May 2012. The order impugned was made by Njagi J, who found that the applicant herein, Bedan Nyaga Karani, was not a biological child of the deceased.

2. The relevant paragraph in that ruling reads as follows:-

‘From the above evidence, it is patently clear that Mr. Karani purported to be a biological son of the deceased while he knew well that he was only a step son. In a polygamous establishment such as this one, whereas each child has a right to inherit a share of the father’s property, only the biological children are entitled to inherit their mother’s property. Mr. Karani therefore misrepresented himself by claiming to be a son of the deceased whereas he was only a step son who had no locus standi to inherit the property of his step mother. He was masquerading as a son of the deceased while knowing very well that he was not a biological son. To allow the grant stand would be tantamount to giving a seal of approval of a fraud and thereby allowing the respondent to benefit from his own wrong. That would be inappropriate in both law and equity. ‘

3. It is the above ruling that the applicant seeks to have reviewed. In the grounds set out on the face of the application, as well as in the affidavit sworn in support of the application, the applicant contends that he is a biological child of the deceased. He states that the local Chief of the rural Location where the family hailed from ought to have been summoned to testify on the matter. He contends too that he had opened a bank account after the deceased’s demise in the joint names of himself and the children of the deceased to receive the rents collected from estate property. He also avers that he had also opened an account with the electricity supply corporation in his name in respect of power connection to the estate property. He contends that he could not have been done that if he was not a biological child of the deceased.

4. The application is opposed. There are grounds of opposition to the application by the respondents. They cite unreasonable delay in the bringing of the application, lack of discovery of new important matter of evidence and lack of error apparent on the face of the record.

5. The applicant filed an affidavit on 10th November 2014, sworn on even date. The said affidavit was filed without leave of court. In it, the applicant sought leave to call a witness.

6. When the matter was placed before me on 26th November 2014, I directed that I needed to peruse the court file before giving directions on the disposal of the application. I gave the directions on 25th September 2015, to the effect that it being an application for review, it ought to be disposed of in the usual way, by way of arguments made orally or in writing as the court might direct. The matter was listed for hearing on 20th June 2016 before me. The applicant did not argue the application; instead he invited the court to determine it.

7. The application before me is for review of a court order. The jurisdiction to review orders made by a probate court is exercised through the review provisions in the Civil Procedure Rules, which have been imported into probate practice through Rule 63 of the Probate and Administration Rules. Under the Civil Procedure Rules review of court orders can be done on three general grounds: where there is an error apparent on the face of the record, or where the applicant has discovered a new important matter of

evidence that was not available as at the date the order sought to be reviewed was made, or where there exists other sufficient reasons for the review of the order.

8. I have carefully gone through the grounds set out on the face of the application, as well as through the affidavit of the applicant in support of the application, inclusive of the annexures thereto. I have not seen any matter that can be said to bring out an error on the face of the record with respect to the impugned order, nor to demonstrate that a new and important matter of evidence had been discovered by the applicant after the order was made that he could not possibly have placed before the court before 3rd May 2012. I have also not been convinced there are other sufficient reasons for interfering with the order made on 3rd May 2012.

9. The long and short of the above is that I have not found any cause to review the orders made on 3rd May 2012. It is my finding that the application dated 31st December 2012 is not merited. If the applicant was aggrieved by it, he ought to have lodged an appeal. I shall therefore dismiss the said application with costs.

DATED, SIGNED and DELIVERED at NAIROBI this 18TH DAY OF NOVEMBER, 2016.

W. MUSYOKA

JUDGE