



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO. 471 OF 2010

IN THE MATTER OF THE ESTATE OF ASHA ALI-DECEASED

AND

IN THE MATTER OF YUSUF AHMED HERSI (DECEASED ADMINISTRATOR)

AMINA ABDI.....APPLICANT

VERSUS

FATUMA MOHAMED EGE.....OBJECTOR

RULING

1. The application dated 22/09/2014 has been brought under the provisions of Section 47 of the Law of Succession Act Cap. 160. The Applicant seeks to substitute Yusu Ahmed Hersi (deceased) as the Administrator of the Estate of Asha Ali Ainashe.
2. Yusuf Ahmed Hersi (hereinafter referred to as the administrator) was appointed as the administrator of the Estate of the late Asha Ali Ainashe (hereinafter referred to as the deceased) by the Letters of Administration Intestate issued by this court on 2nd December 2010. The administrator was the sole beneficiary of the estate of the deceased which constitutes one parcel of land known as Plot No. 5 Narok Township and household goods. However, he died on 18/03/2010, before Grant of Letters of Administration issued to him had been confirmed.
3. The Applicant is the wife of the administrator. She wishes to substitute her husband as the administrator of the deceased's estate. Her intention is to finalise this succession cause and in the meantime, to protect the estate from being wasted by the objector, Fatuma Mohamed Ege, who also claims an interest in the estate.
4. The objector has opposed the application for substitution. In her Replying Affidavit sworn on 8/10/2014, she alleges that she is the sole beneficiary of the deceased's estate. She explained that the deceased had three sisters and no children. According to the Holy Quran, the Objector has a superior right than that of the deceased administrator who was the son of their eldest sister. Being the only surviving sister and by virtue of the fact that their parents are deceased, the objector is the only person who is entitled to the deceased's estate.
5. Further, the Objector alleged that prior to her death, the deceased bequeathed her the property in accordance with the Muslim Law of Devolution of an Estate. She acknowledges that the deceased occupied the property but with her consent and as a tenant.
6. In their submissions in support of their rival positions, Counsel for the the parties reiterated the averments in their documents. Mr. Karanja for the Applicant submitted that if the deceased had

- transferred the property to the Objector prior to her death as alleged in the Replying Affidavit, this property could not have formed part of the estate of the deceased in this succession cause. He argued that there is no evidence that the property had been transferred.
7. He also submitted that the application for revocation that is currently pending for determination must be defended. Accordingly, the deceased administrator must be substituted so that this succession cause can proceed. This court has inherent powers under Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules.
 8. Counsel for the Objector submitted that it is not disputed that the late administrator was not the deceased's biological son. His contention that he was an adopted son of the deceased, is also not viable because according to the evidence, it means that the deceased adopted the late administrator when she was 11 years old.
 9. Counsel also submitted that the grant has no basis in law as the late administrator had nothing to show that he owned the land. In addition, the application offends the provisions of Section 67 of the Law of Succession Act.

ANALYSIS

10. I have considered the pleadings and the rival submissions of Counsel. I

note that the issues raised by the Objector are primarily on the validity of the Grant issued to the late administrator. Her objection is primarily that the late administrator has no claim to the estate of the deceased because she was in the nearest degree of consanguinity to the deceased according to the Holy Quran. She also alleges that the deceased bequeathed her the property which is the subject of the estate prior to her death.

11. The Objector has no objection, *per se*, to the Applicant replacing her deceased husband as the administrator of the estate. Her opposition concerns the validity of the grant, that it should not have been issued to the late administrator in the first place and that he had no right to the property.
12. It is clear that at this point the Letters of Grant of Administration that had been issued to the deceased are no longer operative because of his death. The Applicant and the Objector have rival interests in the estate which will be settled during the determination of the application for revocation of the grant. Before the question of the entitlement of the deceased administrator to the estate can be determined, and on the circumstances that have been disclosed in this case, the applicant is the right person to administer the estate. It is my view that the succession cause will only be properly determined if she is allowed to substitute her deceased husband.

DETERMINATION

13. For the above reason, the application dated 22/09/2013 is hereby granted. The costs shall be in the cause.

Dated, Signed and Delivered at Nakuru this 17th day of February, 2015.

A. MSHILA

JUDGE