



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 820 OF 2007

IN THE MATTER OF THE ESTATE OF SIPELLAH KHASATSILIDECEASED

AND

IN THE MATTER OF LEONIDAH INJETE SHILOYA.....PETITIONER/DECEASED

PHILIP MUKOYA LUMULI.....APPLICANT

VERSUS

ATHANAS ANDOLE SHILOYA.....1ST RESPONDENT

HENRY MUKUNGA AKHULUNYA.....2ND RESPONDENT

RULING

1. The deceased herein died on 25/08/2004 at the age of 95 years. She was survived by, among others, Leonidah Injete Shiloya, the petitioner herein. Grant of letters of Administration Intestate was issued to the Petitioner on 10/03/2008. The deceased, according to the affidavit of the applicant herein died on 12/09/2010. There is a certificate of Death No. 0060444 dated 06/03/2014 attesting to that fact.

2. By the summons dated 06/03/2014, the applicant herein, Philip Mukoya Lumuli is seeking orders, inter alia, that he be substituted in place of Leonidah Injete Shiloya. The application is premised on grounds, inter alia, that the death of the petitioner has stalled these proceedings and that it is therefore in the interest of justice that the application be allowed to enable the applicant finalize this matter that has been pending for long. The applicant also swore a supporting affidavit dated 06/03/2014 in which he states that the petitioner was his sister while the deceased was his mother. He also states that as son to the deceased he is entitled to step in the shoes of the petitioner who is now deceased for purposes of enabling the proceedings herein to move forward.

3. The summons is opposed vide the replying affidavit of Athanas Andole Shiloya sworn on 26.05.2014. The deponent avers that the deceased in this cause was his grandmother who had only one child in the person of the petitioner, now deceased and that he is son to the petitioner. The deponent produced copy of a letter dated 30/06/2012 from the office of the Assistant Chief Lunyinya Sub-Location, Shianda Location Annexure AA1 – to the effect that Athanas Andole Shiloya be afforded the opportunity to succeed his mother, Leonidah Injete Shiloya though the deponent does not say whether or not there is any relationship between the petitioner and the applicant. He states that it is not true that the deceased was the applicant's mother and that the petitioner was his sister. The deponent asks for dismissal of the

applicant's summons which he says is lacking in merit.

4. By agreement of the parties this application proceeded by way of written submissions. The applicants written submissions which are dated 27/04/2015 were filed on 29/04/2015. The applicant doubts the stance of the objector herein, Athanas Andole Shiloya and wonders why if indeed the objector was the petitioner's son, he has been slow in moving the court for substitution of the petitioner. The applicant urged the court to find and hold that the objection to the summons for substitution has no basis and to dismiss it altogether.

5. The 1st respondent's written submissions are dated 05/05/2015. It is contended therein that the applicant does not seem to know his relationship with the deceased. He particularly points to paragraph 5 of the applicant's supporting affidavit which reads as follows;-

"5. THAT;- I state and swear that the petitioner now deceased was/is my sister.."

In paragraph 7 of his affidavit the applicant states;-

"7. THAT;- I state and swear that being a son to the late Sipellah Khasatsili, I have the legal capacity to file this application for substitution and rectification of grant of letters of administration."

6. It is thus the contention of the objector that there is no relationship between the deceased and the applicant, nor is there any relationship between the applicant and the petitioner, now deceased. The 1st respondent has urged this court to dismiss the applicant's summons.

7. Going back to the petition for grant, deceased herein was survived by;-

- Leonidah Injete Shiloya
- Athanas Andole Shiloya
- Henry Mukunga Akhuchiya
- Philip Mukoya Lumuli

Though the relationship of each of the above persons to the deceased was not indicated, what is clear is that both the objector and the applicant are shown in form P&A 4 as beneficiaries of the deceased alongside the petitioner, Leonidah Injete Shiloya. Now that the applicant has taken the step of moving the court to stand in the shoes of the petitioner, I see no valid reason why the objector should complain. He had an equal opportunity to make the application which has now been made by the applicant.

8. The summons which is the subject of this ruling was brought under the provisions of rule 73 of the Probate and Administration Rules. The rule empowers this court to make such orders as would meet the ends of justice. In the instant case, it is my view that since the petitioner is dead it is imperative that another person should be appointed in place of the petitioner so as to take the process of administration of the deceased's estate to another level. I also note that there seems to be some contention between the applicant and the objector both of whom were named on form P&A 5 as beneficiaries of the deceased's estate. In order to avoid any further delay in this matter I allow the summons dated 06/03/2014 with modifications so that Philip Mukoya Lumuli and Athanas Andole Shiloya shall be the joint administrators of the deceased' estate in the place of Leonidah Injete Shiloya who is now deceased.

9. Accordingly a fresh grant of Letters of Administration Intestate, form P&A 41, shall be issued in the joint names of Philip Mukoya Lumuli and Athanas Andole Shiloya. It is also directed that the two shall, within 60 days of the issuance of the fresh grant, apply to the court for confirmation of the grant. For the avoidance of any doubt, the grant issued to Leonidah Injete Shiloya on 10/03/2008 be and is hereby cancelled.

Orders accordingly.

Ruling delivered, dated and signed in open court at Kakamega this 24th day of September 2015

RUTH N. SITATI

JUDGE

In the presence of;-

Miss Andia for Rauto for Applicant

Mr. Elungata for Wagusa for 1st Respondent/Objector

.....For 2nd Respondent

Mr. Lagat - Court Assistant