



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 1048 OF 2012
IN THE MATTER OF THE ESTATE OF G K (DECEASED)

RULING

1. The deceased died intestate on 13th April 2012 at Nairobi. On 25th October 2012 letters of grant of administration were issued to **W W M** and **J K M** and it was subsequently confirmed on 21st May 2013. On the 24th February 2014 **J W K** was appointed an administrator together with **W W M**. The appointment of **J K M** was revoked.

2. The application coming for consideration is the application dated 5th June 2015 by **S W G**, she seeks the following orders;

- i. That she be included as a co-administrator of the deceased's estate
- ii. That the order of 24th February 2014 be reviewed to remove **W W M** as the co-administrator of the deceased's estate;
- iii. That reasonable provisions be made to her as a wife of the deceased from the net estate of the deceased;
- iv. That **W W M** to hand over her children
- v. That she be given the responsibility of holding her children's share of their property in trust on their behalf
- vi. That the application by James Onesmus Gitonga Weru dated 19th January 2015 be allowed.

3. The application is grounded on the grounds that the applicant was married customarily to the deceased in 1995 and they were blessed with two issues **N N G** and **A G** born in 1996 and 1997 respectively. The parties however fell out and separated in 2003 but the two never divorced and as such she claims to be entitled to adequate provision from the deceased's net estate. She alleges that **W W M** the administrator who also has her children has been mismanaging the estate of the deceased.

4. In her affidavit in support of the said application she reiterated the grounds on the face of her application. She avers that **W W** was a house help and later claimed to be a wife despite there having been no customary or civil marriage between her and the deceased and as such has never been recognized as a wife by the deceased's family. That despite separating with the deceased she kept in touch with her children. She alleges that the marriage certificate used to obtain the said grant was fake and that she has reported the matter with the CID. That after obtaining the said grant went ahead to mismanage the estate of the deceased and never deposited any money into the savings accounts of **N N G** and **A M G** opened for purpose of saving for their future.

5. The respondent opposes the application through her replying affidavit dated 15th June 2015. She avers that the applicant though a wife to the deceased deserted him and her children of tender age in 2003. She refutes being a house help stating that she was the deceased's wife and began co-habiting with the

deceased as his wife in 2004. That the said children N N G (19 years) and A M G (17 years) do not recognize her as their mother having abandoned them at a tender age. She denies mismanaging the deceased's estate and denies her claims that she refused her access to her children. She avers that the said children are almost of age and will be able to decide with whom they want to live with. That when she married the deceased he also took in her daughter J N G (11 years) and as such she is a beneficiary of the deceased's estate.

6. The applicant's claim of being a wife to the deceased is not refuted by the respondent and there is no evidence adduced that she ever divorced the deceased or ever got re-married after she separated with the deceased.

"Section 29 of the Law of Succession Act Cap. 160 defines, a **"dependant" to mean- (a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;**". Being a former wife of the deceased I find that the applicant is entitled to succeed the deceased as a dependant. However I am not persuaded that she should be a co-administrator of the deceased's estate for she left the deceased sometime back and appears to have had no relation with him. **W M** and **J K** shall remain as administrators of the deceased's estate. Being a former wife the 2 administrators can provide something adequate to the applicant from the deceased's estate.

7. The applicant has challenged the respondent's status as a wife to the deceased claiming that the marriage certificate the respondent used to secure the grant to the deceased's estate was fake. It is trite law that he who alleges must prove, other than the allegation that the respondent's marriage certificate is fake. The letters attached by the applicant from the State Law Office dated the 14th of October 2013 is not conclusive proof of her allegations. As per the eulogy of the deceased dated Wednesday 18th April 2012 the same gives the wife's name as W W and three children namely N, A and J. I find that the applicant has not adduced sufficient evidence to support her allegation challenging the marriage certificate adduced by the respondent and as such I find that for the purpose of this succession cause was indeed a wife to the deceased.

8. The respondent has had the applicant's children in her custody since she married the deceased in 2004 having been deserted by their mother in 1993. I tend to think that within the said period the children have stayed with the respondent they have developed some kind of relationship to her, further the two are almost of legal age to make the decision for themselves on with whom they wish to live with N N G being (19years) and A M G (17 years). I therefore decline to grant the applicant's prayer to be given the children and also to have the responsibility of managing their inheritance or holding what they are entitled to in trust.

9. The applicant has claimed that the respondent has mismanaged the estate of the deceased, allegations the respondent refutes. Section 83 of the Law of Succession Act, Cap 160 provides, **"(e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;"**

The said provision provides that it is the administrators' duties to give account of the account noting all dealings in the said estate they are managing. As such, I find it is in order for the respondents /administrators to procure the services of a certified accountant at the cost of the estate to facilitate the drawing of proper up to date accounts in regards to the said deceased's estate, noting the assets and liabilities and any dealings conducted thereof, this to be done within 60 days from the date of this Ruling. Cost shall be in the cause. It is so ordered.

Dated, signed and delivered this **28th** day of **October** 2015.

R. E. OUGO

JUDGE

In the presence of:-

.....**For the Applicant**

.....**For the 1st Respondent**

.....**For the 2nd Respondent**

Charity Court Clerk