



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 720 OF 2014
IN THE MATTER OF THE ESTATE OF P N W (DECEASED)
M W W.....APPLICANT/OBJECTOR
VERSUS
P M N.....RESPONDENT/PETITIONER
JUDGMENT

1. The deceased P N W died intestate on 29th August 2012 at Ruai in Nairobi. On 26th March 2014 the respondent, in her capacity as his wife, petitioned for the grant of letters of administration intestate. In the affidavit that she swore to support the petition the beneficiaries were indicated as herself and their two sons B K K (then aged 26) and M W N (aged 19). A grant of letters of administration intestate was issued to her on 1st July 2014.
2. On 11th November 2014 the applicant filed this summons dated 10th November 2014 seeking the revocation and/or annulment of the grant. Her case was that she was the second wife of the deceased with whom she had a daughter V W N, born on 2nd August 2011, a fact that was known to the respondent who had failed to inform her of the petition and grant. Her marriage to the deceased, she said, was under Kikuyu customary law.
3. The respondent swore a replying affidavit to deny that the applicant was the second wife of the deceased. She denied that there was any Kikuyu customary law marriage between the two.
4. The applicant was represented by Mr Kamau Kinga and the respondent by Mr Njoroge. It was agreed that the application be resolved on affidavit evidence. Counsel then filed written submissions in support of either case.
5. The question to be answered is whether the applicant has proved a Kikuyu customary law marriage between her and the deceased.
6. The applicant annexed to her affidavit an affidavit of marriage that was sworn by the deceased on 6th February 2012 before Donald Wekesa Muyundo Advocate/Commissioner of Oaths in which he stated that:-

“2. THAT sometime in the year 2010 I married one M W W of National Identity Card number [particulars withheld] as per customary rituals and laws of the Kikuyu tribe of Kenya, and have since then cohabited as man and wife in Nairobi.”

The respondent challenged this saying that the signature in the affidavit was not that of the deceased, and annexed to the replying affidavit a copy of the deceased's identity card that had his signature which she said was different from the one in the affidavit. The applicant stated in her supplementary affidavit that the deceased visited her parents in Mugoiri in Muranga in February 2010 to introduce himself and to ask for permission to marry her and left them with Kshs.20,000/=. He returned on 9th May 2012 with his friends and relatives to negotiate and pay dowry. He paid Kshs.50,000/= dowry, Kshs.20,000/= for elders' drinks and Kshs.10,000 for food. The entourage brought along bananas, sodas and bales of wheat flour as presents. She annexed photographs showing her and the deceased in the home. This supplementary affidavit was in response to the respondent's replying affidavit in which she stated that there was no evidence of any Kikuyu customary law rites and rituals performed to support the allegation of marriage. The applicant got S N N, the younger brother to the deceased's father, to swear an affidavit to say that he accompanied the deceased to the home of her parents and was present when the dowry and presents were given to the family. He produced another set of photographs showing the occasion. His affidavit stated that the occasion was on 26th May 2012. This is different from 9th May 2012 when the applicant stated that the occasion was. The respondent's counsel took issue with this discrepancy regarding dates and submitted that it was indication that the occasion did not happen. However, the respondent did not swear any further affidavit to challenge the occasion, or the fact of dowry payment. There was no allegation that these photographs had been made up. She did not say that she did not know S N N to be the deceased's relative, or at all.

7. As further evidence that she was known to be the second wife of the deceased with whom she had a child, the applicant produced the Funeral Programme for the deceased who was buried on 7th September 2012. It contained an “Eulogy” whose part of “Marriage” read as follows:-

“The Late P N was married to P M and M W. He was blessed with three children B K, Martin W and T W”.

Again, the respondent did not swear an affidavit to challenge the fact of this funeral. She did not give evidence to show that the “Eulogy” was not the official one used at the burial of the deceased. It was not indicated that the applicant made up “Eulogy” for the purpose of this case. It must reasonably follow that the funeral of the deceased proceeded on the basis that he had left two widows, the respondent and the applicant, and that the former had two sons and the latter had a daughter.

8. In all, after considering the affidavit evidence, the submissions and the authorities cited, it is clear to me that the deceased and the applicant got married under Kikuyu customary law in which dowry was paid to her parents. She got a daughter with the deceased. She was the second house of the deceased. I find that the respondent's denial of these facts is not true and hereby discount it. The applicant, it follows, had the right to be involved in the petitioning for the grant. Her existence was concealed to the court. She was a beneficiary and so was her daughter. It is for these reasons that I revoke the grant that was issued to the respondent on 1st November 2014. In its place, there shall be issued a fresh grant in the joint names of P M N and M W W. The parties, or either of them, shall be at liberty to seek the confirmation of the grant within 60 days from today. I ask that each side bears its own costs as this is a family dispute.

DATED and DELIVERED at NAIROBI this 25th day of November 2015

A.O. MUCHELULE

JUDGE