



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 145 of 1998**  
**IN THE MATTER OF THE ESTATE OF MOHAMED SALEH SAID SHERMAN**  
**alias MOHAMED SWALEH SHERMAN (Deceased)**  
**SWALEH MOHAMED SHERMAN.....APPLICANT**

**RULING**

1. Before this Court is a Chamber Summons Application seeking the following orders that:-

- a. Leave be granted of Mohamed Salet Swaleh Mohamed Sherman to be joined as a joint administrator to the estate of the deceased herein.
- b. That costs be provided for.

The Applicant's Case

2. The Application is supported by the grounds on the face of it as well as the Supporting Affidavit of the Applicant, sworn on 8.12.10. The Applicant deponed in his Affidavit that he is a son of the deceased and seeks to be joined as administrator of the estate of the deceased to represent the interests of his sisters Naima Mohamed Sherman and Munaa Mohamed Sherman; that a grant of probate had been issued to Awadh Saleh Said Sherman and Said Saleh Said Sherman on 10.11.98; that the said grant was revoked and reissued to Barika Mohamed Sherman on her application; that he has consulted with family members and his two sisters and all have agreed that he petition the Court to be appointed co-administrator to the estate as he is the only son of the deceased.

The Respondent's Case

3. In her Replying Affidavit sworn on 29.3.11, Barika Mohamed Sherman deponed that the grant to herself was conditional; That the Applicant ferociously opposed the revocation of the grant made to his 2 uncles Awadh Saleh Said Sherman and Said Saleh Said Sherman and also to her appointment notwithstanding that he was aware that the two had obtained the grant fraudulently; that the Applicant was being used by his uncles to frustrate her efforts to trace, collect and administer the estate; That she was not opposed to the appointment of the Applicant as a co-administrator but prayed that the Court allows her to initially solely administer the estate for purposes of identifying and gathering the estate and that the Applicant come in at the distribution stage.

Determination

4. The matter came up before me and I heard the rival submissions of counsel for the parties. Mr. Oloo for the Applicant reiterated that his client sought to represent the interests of the deceased's first wife's children viz himself and his 2 sisters Naima Mohamed Sherman and Munaa Mohamed Sherman who are resident abroad. Mr. Oloo submitted that the grant to Barika Mohamed Sherman his step mother was conditional; that his client admits that there may have been differences between the families of the first and second wives of the deceased but that those differences can be reconciled so that the estate can be administered according to the wishes of the deceased; no evidence had been produced to show that the Applicant was being used by his uncles to frustrate Barika Mohamed Sherman in her efforts to identify and bring in the estate of the deceased.

5. Mr. Taib on behalf of Barika Mohamed Sherman vehemently opposed the Application. He submitted that the Applicant has all along benefitted from the estate at the behest of his two uncles, the previous grantees herein; that he works for them and has always supported them and will not therefore be able to go against them and will be compromised by them. That when Barika Mohamed Sherman was fighting against the Applicant's uncles for her rights, the Applicant was on their side opposing her; that it is only when Ibrahim, J. (as he then was) revoked the grant to the uncles and appointed her as administrator herein that the Applicant changed sides. Mr. Taib further submitted that Barika Mohamed Sherman be unfettered as she embarks on the difficult task locating the hidden assets of the estate herein; that tying her to the Applicant would frustrate her efforts as he would do the bidding of his uncles who have all along frustrated her; that she Barika Mohamed Sherman be given full powers to collect the estate alone and thereafter the Applicant can join her in for purposes of distribution. Finally Mr. Taib submitted that there was no requirement in the law to bring disparate members of a family to "protect" interests of family members.

6. I have carefully considered the Application and the Supporting and Replying Affidavits, the Authorities provided, as well as the rival oral submissions made by counsel for the parties.

7. The issue for determination is whether the Applicant should be appointed co administrator with Barika Mohamed Sherman to represent the interests of the first wife's family comprising of himself and his two sisters.

8. In making a determination, I have also carefully considered the Order of Ibrahim, J (as he then was) of 18.11.10 in which after revoking the previous grant herein, the learned Judge appointed Barika Mohamed Sherman on condition *inter alia* that

**"the Court determines upon being moved by any beneficiary whether the appointment of Barika Mohamed Sherman should be as a single Administrator or joint with one or more Administrators to represent the interest of the Family of the 1<sup>st</sup> wife i.e. Swaleh Mohamed Sherman and his two sisters"**

9. Section 66 of the Law of Succession Act provides that the court shall

**"... have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made..."**,

It is clear that the Court has the final discretion in determining to whom a grant of letters of administration is to be made. Section 66 however enjoins the Court **"to accept as a general guide the following order of preference—**

**a. surviving spouse or spouses, with or without association of other beneficiaries;**

**b. other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V**

**c. ..."**

This general guide however is to be accepted without prejudice to the final discretion of the Court. In as much as Barika Mohamed Sherman as spouse of the deceased herein has priority over the Applicant, that priority is not absolute; it is with or without association with other beneficiaries.

10. I find that while it is true that that there is no requirement in the law to appoint as administrators disparate beneficiaries to “protect” interests of family members it is also true that the there is no law barring such persons from being so appointed together, in the best interests of all concerned. Given the history of this very old matter, leaving out the Applicant will in my view not be in the best interests of all concerned. It is likely to increase the animosity between the two families and further delay the matter. It is imperative that the collecting in and distribution of the estate herein be done without further delay.

11. In the result, I find that the Application herein has merit and I hereby order that:

- a. Swaleh Mohamed Sherman be and is hereby appointed joint administrator with Barika Mohamed Sherman of the estate Mohamed Saleh Said Sherman alias Mohamed Swaleh Sherman;
- b. The joint Administrators shall within 90 days of the date hereof jointly or separately produce to the Court a full and accurate inventory of the assets and liabilities of the deceased and accurate account of all dealings therewith up to the date of the account;
- c. Costs shall be in the cause.

**DATED, SIGNED and DELIVERED in MOMBASA THIS 8<sup>TH</sup> DAY OF DECEMBER, 2015.**

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**M. THANDE**

**JUDGE**

**In the presence of: -**

..... **for the Applicant**

..... **for the Respondent**

..... **Court Assistant**