Pymto & another v Lyonn (Succession Cause 57 of 2010)
[2014] KEHC 7543 (KLR) (17 January 2014) (Judgment)

Paul Tono Pymto & another v Giles Tarpin Lyonnet [2014] eKLR

Neutral citation: [2014] KEHC 7543 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

SUCCESSION CAUSE 57 OF 2010

FA OCHIENG, J

JANUARY 17, 2014

BETWEEN

PAUL TONO PYMTO ..... 1ST PETITIONER

CHARLES KIBIEGO RON ..... 2ND PETITIONER

AND

GILES TARPIN LYONN ..... OBJECTOR

When presumption of marriage entitled a party to take out letters of administration.

Reported by Teddy Musiga

Law of Succession *- Probate and Administration - intestate succession - Objector proceedings - objector's intention to be made sole administrator of the estate of the deceased - scope of powers of administrators to estate of deceased persons -- Law of Succession Act, section 66.*

Brief facts

Following the death of the deceased, her brother filed a Petition for letters of administration of her estate. However, an objection was filed in court by Giles Tarpin Lyonnet (the objector). He described himself as the widower to the deceased. He therefore, asserted that he was the sole heir and administrator to the estate of his late wife.

Issues

1. Whether presumption of marriage could entitle one to take out letters of administration.

Held

1. There was an irrefutable legal presumption of marriage between the objector and the deceased. The objector was therefore declared the sole administrator of the estate of the deceased.

2. When a person died intestate, the estate of the deceased could not be effectively distributed outside the Court. "Effective distribution" meant the exercise which could thereafter enable each beneficiary to get their lawful title to the portion which had been given to him or her.

3. The Chiefs and members of the respective families had a role to play in trying to help in resolving issues of distribution, but without an order from the court, the Commissioner of Lands or the Registrar of Lands could not issue a title to any beneficiary.

4. It was only when the Court of law gave an order, specifying the property which was to be transferred to a particular person, that the said person would thereafter acquire a title thereto lawfully.

5. In matters of administration of the estates of persons who died intestate, Chiefs and family members had a very limited role to play.

6. Administrators had to appreciate that their role was to gather together all the assets of the deceased. They then also identified the liabilities. They had no authority to dispose off the assets without express orders from the Court. They did not even have authority to distribute the assets.

7. When they had paid off all liabilities, the administrators had to return to the Court to seek authority to distribute the remaining assets to the beneficiaries.

8. Administrators were answerable to the court and to the dependents for their actions.

Objection proceedings allowed.

Orders

Each party was to bear its costs of the objection proceedings.

Citations

None referred to

Statutes

East Africa

1. Law of Succession Act (cap 160) section 66 - (Interpreted)

JUDGMENT

1. Hellen Chepkoech passed away on 26th January, 2008, at the Eldoret Hospital.

2. On 24th February, 2010, her brothers, Paul Rono Pyomto and Charles Kibiegon Ronoh filed a Petition for letters for the administration of her estate.

3. In the Affidavit in support of the Petition, the two Petitioners listed a total of seven beneficiaries as follows;

    (a) Kiprono Arap Biombo - 75 Yrs Father

    (b) Annah Chepterer Tabsabei - 81 Yrs Mother

    (c) Paul Rono Yomto - 54 Yrs Brother

    (d) Christina Chepkemboi Biambo - 57 Yrs Sister

    (e) Joseph Kipkering Rono - 68 Yrs Brother

    (f) Charles Kibiegon Rono - 48 Yrs Brother

    (g) Eunice Chelangat Kering - 51 Yrs Sister

2. The Petitioners also filed a letter dated 5th August 2009, from the Chief of Kapsaret Location, Mr Henry K Togom. In that letter, the Chief cited all the 7 beneficiaries as listed in the Petition, above. However, the Chief's letter had one more beneficiary, namely Joel Kibiy Rono, who was said to be a brother of the deceased.

3. The Chief categorically stated that the deceased was not married.

4. Although Joel Kibiy Rono was not cited by the Petitioners, as one of the beneficiaries, he signed the consent to the making of the Grant of Letters of Administration to the Petitioners.

5. On 12th January, 2011, an Objection was filed in court by Giles Tarpin Lyonnet, (hereinafter cited as "the Objector").

6. The Objector described himself as the widower to the deceased. He therefore asserted that he was the sole heir and administrator to the estate of his late wife.

7. In the opinion of the Objector, the Petitioners were not dependants of the deceased. He also believes that they were not entitled to be Administrators, when he (the Objector) was alive, unless he either renounced his rights or consented to their desire to administer the estate.

8. The Petitioners have answered the Objector by telling him that he was not married to the deceased. As far as the Petitioners were concerned, the Objector had failed to produce evidence to demonstrate that there had been any form of marriage between him and the deceased.

9. Indeed, the Petitioners were categorical, that the Objector never paid any dowry in accordance with the customs of their community.

10. The Petitioners exhibited a Summons from the District Commissioner, Uasin Gishu District, requiring the Objector to see the District Commissioner. According to the Petitioners, the District Commissioner wanted the Objector to;

> give his position whether he was married, and if so, to abide by the customs by paying up his dowry, a fact which was never owned to. (sic'.)"

11. The Summons from the District Commissioner is dated 14th February, 2000. It was worded as follows;

> Re: Summon You are hereby requested to see the undersigned on 1st February 2000 at 9.30 am without fail.
>
> (Francis Ka Sigei) District Commissioner Uasin Gishu.
>
> CC: Kipruto Arap Yaodo PO Box 5208 Eldoret."

12. Although it is not clear whether or not the Objector received the summons, it is significant that some eight (8) years before the deceased passed away, the Objector was being required to abide by customs, by paying dowry.

13. In effect, the Petitioners, through their own documentation, acknowledged that there existed a relationship between the Objector and Hellen Chepkoech. The nature of the said relationship was one in which, under customary law, the Objector was required to pay dowry. In my understanding of African traditions generally, dowry is only payable in respect to marriage. There is no other relationship in which dowry is payable.

14. The Petitioners have also exhibited a "Family Agreement", in which the beneficiaries of the estate of the late Hellen Chepkoech were identified.

15. It is true, as the Petitioners pointed out, that the Objector was not given any portion of the estate.

16. The Family Agreement is dated 1st March, 2008, and it is said to be an agreement between the Objector and the family of Mr Kiprono Arap Yamdo.

17. As the Agreement allegedly determined the manner in which the property of the deceased was to be distributed, that leads the Court to ask itself why the Objector was recognized as such an integral part of the exercise of determining the mode of distribution of the properties belonging to the deceased.

18. He was definitely not a stranger to the family of Mr Kiprono Arap Yamdo.

19. And in particular, he must have had an acknowledged association or "relationship" with the property of the deceased.

20. An interesting aspect of the Agreement was that it was executed in the presence of Henry K Togom, the Chief of Kapsaret Location. I say that it is interesting because that chief is the same person who wrote a letter indicating that the Objector was not married. If the Objector was not married to the deceased, one wonders why the Chief was witnessing the signing of the Agreement between the Objector and the family of Mr Kiprono Arap Yamdo, in respect to property of the deceased.

21. The Petitioners were also witnesses to the said Agreement dated 1st March 2008.

22. Again, the court cannot understand why they deemed it necessary to have that Agreement with the Objector, unless they had acknowledged the connection between the Objector and the deceased.

23. Another aspect of the Agreement is the following statement, at the very end of the said Agreement;

> NB There is a will for the late Hellen Jepkoech to be read to the family members by the Advocate."

24. The Petitioners have not told this Court about the fate of the said Will. Infact, if there was a Will, as indicated in the Agreement, these Probate and Administration proceedings would not have been necessary.

25. On his part, the Objector has exhibited a Marriage Certificate. The said document is in the French language.

26. For this Court to admit it in evidence, the Certificate should have been certified and an English translation thereof provided. As the "Marriage Certificate" (Extrait De L'acte De Marriage No 47/97) was not translated into the English language, this Court is unable to admit it in evidence.

27. The net result is that the Objector did not produce an admissible Certificate, to prove the marriage between him and the deceased.

28. Does that mean that he was not married to the deceased?

29. There is before me the "Funeral Programme" for the late Hellen Chepkoech Tarpin Lyonnet.

30. In that programme, the Objector is cited as having been the husband of the deceased.

31. The Petitioners did not challenge the authenticity of that Funeral programme. When Charles Kibiego Rono filed an Affidavit to answer the Objector's Replying Affidavit, he remained very "silent" in the face of that programme.

32. To my mind, that speaks volumes.

33. Yet, I acknowledge that reference in a funeral notice which is published in a newspaper, is not, of itself proof of the existence of a marriage. Similarly, the fact that the Objector is described as the husband to the deceased, in the funeral programme, is not, of itself, proof of their marriage.

34. But when all the facts are taken into account, I have no doubt at all that they firmly and clearly prove that the Objector was the husband of the deceased. The family of the deceased recognized that fact; and the District Commissioner too.

35. It is very sad indeed that after the lady passed away, her brothers should seek to disown the Objector.

36 Even in the absence of the admissible Marriage Certificate, I find and hold that there was an irrefutable legal presumption of the marriage between the Objector and Hellen Chepkoech.

37. I also note that Charles Kibiego Rono stated, in his Affidavit sworn on 4th August, 2011, that;

> ... the deceased depended on her parents and brothers, and at one time even sold her father's motor vehicle to secure Transport/travel ticket to go abroad."

38. To my mind, that suggests that the Petitioners were not actually Dependants of the deceased. If anything, they appear to have been her benefactors. However, I must make it clear that this finding is not final. Perhaps, the circumstances may have subsequently changed, resulting in the Petitioners or either of them becoming Dependants. That will be a matter of evidence.

39. For now, and by virtue of the provisions of section 66 of the *Law of Succession Act*, I declare that the Objector shall be, forthwith, the Sole Administrator of the Estate of Hellen Chepkoech.

40. The issues as to whether or not there are other Dependants, and ultimately, how the estate will be distributed, will be determined when the Administrator files an application for the confirmation of the Grant. It is my sincere hope that the parties concerned will strive to find an amicable solution to the question of distribution. However, if they fail to resolve the issues amicably, the Court will give effect to the relevant provisions of the law.

41. As regards the costs of the Objection proceedings, I order each of the parties to bear his costs. I so order, in the hope that it will help in keeping emotions from heightening before the Grant comes up for confirmation.

42. In Conclusion, I feel that it is necessary to emphasize that when a person dies intestate, the estate of that person cannot be effectively distributed outside the Court. By the phrase "effective distribution", I mean the exercise which can thereafter enable each beneficiary to get lawful title to the portion which has been given to him.

43. The chiefs and members of the respective families may play a role in trying to help in resolving issues of distribution, but without an order from the Court, the Commissioner of Lands or the Registrar of lands cannot issue a title to any beneficiary.

44. It is only when a Court of law gives an order, specifying the property which is to be transferred to a particular person, that the said person would thereafter acquire a title thereto lawfully.

45. It is thus important for the Chiefs and family members to appreciate that in matters of the Administration of the estates of persons who died intestate, they have a limited role.

46. Meanwhile, Administrators must also appreciate that their role is to gather together all the assets of the deceased. They then also identify the liabilities.

47. They have no authority to dispose of assets without express orders from the Court.

48. They do not even have authority to distribute the assets.

49. When they have paid-off all liabilities, the Administrators must return to the Court, to seek authority to distribute the remaining assets to the beneficiaries.

50. I have deemed it necessary to point out these two points, because all too often, there is unnecessary anxiety following the appointment of administrators, if we think that they do not ordinarily, support one or another Dependant.

51. Administrators are answerable to the Court and to the Dependants for their actions. And the Court does justice to all parties without fear or favour.

DATED, SIGNED AND DELIVERED AT ELDORET, THIS 17TH DAY OF JANUARY, 2014.

.....

FRED A. OCHIENG

JUDGE.