



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO.2143 OF 2007**

**IN THE MATTER OF THE ESTATE OF S K V D (DECEASED)**

**R H &**

**T H.....PETITIONERS**

**VERSUS**

**A K M D &**

**M D.....OBJECTORS**

**J U D G M E N T**

S K V D, the deceased herein died in Kampala, Uganda on 18<sup>th</sup> December 2006. On 17<sup>th</sup> August 2007, the Petitioners herein petitioned the court to administer the estate of the deceased. R Hu (R) deponed that she was seeking to administer the estate of the deceased in her capacity as the widow of the deceased. She listed herself, F S D (then aged 12 years – daughter) and T H, her sister as dependants of the deceased. When the petition was gazetted, the Objectors herein filed objection to the grant being issued to the Petitioners. The Objectors claimed that they were brothers of the deceased. The Objectors alleged that the Petitioners were strangers to the estate of the deceased as the deceased had neither married R nor had children with her at the time of his death. The Objectors accused the Petitioners of being imposters to the estate of the deceased. They also cross-petitioned the court to be issued with the grant of letters of administration in respect of the estate of the deceased.

The Petitioners and the Objectors filed further affidavits in support of their respective cases. When the matter was listed before the court for directions, the parties agreed that the issues in dispute would be disposed of by way of submission. In that regard, the parties agreed to file written submission in support of their respective opposing positions. The written submission were duly filed. During the hearing of the case, this court heard oral rival submission made by Mr. Kiarie for the Petitioners and by Miss Mulwa for the Objectors. The agreed issues for determination were as follows:

- I. Whether R was married to the deceased.
- II. Whether R and her child F are dependants of the deceased within the meaning of **Section 29(a)** of the **Law of Succession Act**.

As regards the first issue, it was the Petitioners’ case that R was married to the deceased at the time of her death. R swore an affidavit on 16<sup>th</sup> July 2008 in which she annexed a copy of the marriage certificate. The certificate was issued by Jamia Mosque Committee. It indicated that the deceased married R on 3<sup>rd</sup> August 1994 under Islamic Law. The marriage was celebrated in Mabruji in Malindi. According to R,

after the celebration of the said marriage, she cohabited with the deceased in Nairobi. The marriage was blessed with one child, F, born on 20<sup>th</sup> June 1995. She annexed a copy of the birth certificate to her said affidavit. She further stated that in 2004, the deceased got a job in Uganda. She remained in Kenya because of their daughter's educational needs. However, she used to visit the deceased in Uganda. She annexed a copy of an application which had been made by the deceased seeking to be registered as an alien in Uganda. This application was made pursuant to The **Aliens (Regulation and Control) Act, 1983**. In the application, the deceased listed the persons who would accompany him to Uganda to be his wife (R) and his daughter, F. The application was made on 13<sup>th</sup> March 2006. R further deponed that the deceased used to take care of her and the educational needs of the child. She annexed copies of the report cards of the child while she was schooling at *[particulars withheld]* Primary School, Nairobi. She also annexed photographs of herself with the deceased and their daughter.

It was the Petitioners' case that after the death of the deceased, a dispute arose between R and the Objectors. The dispute was mediated by the deceased's former employer in Uganda. The dispute was resolved. A memorandum of understanding was reached between the two parties. The memorandum of understanding is dated 20<sup>th</sup> December 2006. In the memorandum of understanding, R and the Objectors agreed on a mode of distribution of the properties that comprise the estate of the deceased to R and her daughter, on the one hand, and the Objectors on the other hand. R deponed that this agreement was reached on the understanding that she had been recognized as the wife of the deceased. Her daughter too had been recognized as a child of the deceased. It was for these reasons that R urged the court to find that she was a wife of the deceased and therefore his dependant. She also urged the court to recognize F as the daughter of the deceased.

On their part, the Objectors argued that R was not a wife of the deceased. It was their case that during the entire period that the deceased lived in Nairobi before he relocated to Uganda, he resided in the family home together with his brothers. At no time had the deceased indicated that he had married R or that he had a daughter with her. They doubted the certificate of marriage which R relied on in support of her contention that she was married to the deceased. They urged the court to demand that R avails the marriage certificate in Arabic text. They doubted the authenticity of the certificate of marriage. They were of the view that the deceased, being a Hindu, could not have married R in an Islamic marriage without first converting to Islam. No evidence had been placed in court to support the assertion that the deceased had converted to Islam. It was the Objectors' further case that the memorandum of understanding which was signed by them in Uganda was so executed under duress. They disowned the memorandum of understanding because they claim they signed it after they had been threatened with dire consequences if they did not signed it. They urged the court to find that the deceased was single and was not married to R at the time of his death. They pointed out discrepancies in the documents that R relied in support of her petition.

This court has carefully considered the facts of this case. It also had the benefit of reading the written submission filed by counsel for the parties herein. From affidavit evidence, it was clear that R established that she was married to the deceased on 3<sup>rd</sup> August 1994 in Mabru, Malindi. The marriage was an Islamic one. Although the Objectors cast doubt on certificate of marriage produced by R, this court finds no merit with their objection. If the Objectors doubted the authenticity of the marriage certificate, nothing would have been easier than for them to obtain evidence from the mosque at Mabru, Malindi to support their claim that indeed no such marriage had taken place. In any event, parole evidence cannot be adduced to displace documentary evidence. Once R produced the certificate of marriage, it was strictly not necessary for her to prove that she had cohabited with the deceased as husband and wife after the celebration of the said marriage.

However, R did establish that she indeed cohabited with the deceased as his wife prior to his death. R was also able to establish that her marriage to the deceased resulted in the birth of a daughter. The certificate of birth of the daughter names the deceased as the father. The certificate of birth was obtained on 25<sup>th</sup> September 1995, six months after the birth of the child. The birth certificate could not therefore have been contrived to support R's case. The daughter's surnames are those of the deceased. She has been known by those names from the time of her birth. In the application that the deceased made to be registered as an

alien in Uganda, he listed R and F respectively, as his wife and daughter. The Objectors acknowledged R as the wife of the deceased in a memorandum of understanding that was executed on 21<sup>st</sup> December 2006, a few days after the death of the deceased. This court was not persuaded by the allegation made by the Objectors that they were coerced to sign the said agreement. In this court's assessment, it is apparent that the Objectors changed their mind after they had executed the said agreement. All these evidence point to one irresistible conclusion that indeed R was the wife of the deceased. F is their daughter. R and F are therefore dependants of the deceased in accordance with **Section 29(a)** of the **Law of Succession Act**.

As regard the mode of distribution of the estate of the deceased, the only asset that remains to be distributed is the contents of the account in Standard Chartered Bank that is in the name of the deceased. This court holds that the distribution of the said asset shall be in accordance with the memorandum of understanding which was executed between R and the Objectors on 21<sup>st</sup> December 2006 *i.e.* that the monies in the said account shall be distributed equally between R and the Objectors. There shall be no orders as to cost because this is a family dispute. It is so ordered.

**DATED AT NAIROBI THIS 30<sup>TH</sup> DAY OF APRIL 2014.**

**L. KIMARU**

**JUDGE**