



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO. 1536 OF 2013

AND

IN THE MATTER OF THE ESTATE OF P L O (DECEASED)

RULING

1. The Summons dated 9th December, 2013 is brought pursuant to the provisions of **Section 47** Law of Succession Act (Cap. 160) and Rules 49, 59 and 73 of the Probate and Administration Rules. The Applicant thereby seeks orders that-

1.(spent)
2. That the Honourable Court be pleased to substitute the Administrator herein, E A O (deceased), with V O J O.
3. (a) That the Honourable Court be pleased to issue an order that the sum of Kshs. 3, 980, 000 held in the account of the late P L O (deceased) at Barclays Bank of Kenya Limited, Moi Avenue, Nairobi Branch, Account Number **[particulars withheld]** and Account Number **[particulars withheld]** with the same bank be released from the account and paid directly to;

- i. Bank: National Bank of Kenya Limited
- ii. Branch: Hill Branch
- iii. Account Name: **[Particulars withheld]**
- iv. Account number: **[particulars withheld]**

(b) That the Honourable Court be pleased to issue an order that the sum of Kshs. 2, 200, 000 held in the account of the late **P L O (deceased)** at Barclays Bank of Kenya Limited, Moi Avenue Account Number **[particulars withheld]** and Account Number **[particulars withheld]** with the same bank be released from the account and paid directly to;

- i. Bank: The Cooperative Bank of Kenya Ltd
- ii. Branch: The Cooperative Bank House, Haile Selassie Avenue
- iii. Account Name: **[particulars withheld]**
- iv. Account number: **[particulars withheld]**.

4. That the costs of this application be in the cause.

2. The application is predicated on the grounds that the grant of letters of administration intestate of all the estate of the deceased herein, P L O, who died on 14th August, 2012 was granted by this Honourable Court to E A O and M O O. It is also argued that the widow and administrator of the deceased's estate died on 28th October, 2013 leaving only M O O as the sole and only surviving administrator of the estate. It is further stated V O J O is a son to the late P L O and the late E A O (both now deceased) and is a beneficiary of the estate of the deceased in this cause, and he is of adult age and is best suited to join his brother M O O as an Administrator of their late father's estate. The only other beneficiary of the estate is their youngest brother E D O O who is aged 16 years old. That the deceased was the founder, major shareholder, and managing director of **[particulars withheld]** Limited in which he held 4,500 shares. It is averred that before the death of the deceased's, the said company had taken a loan with National Bank of Kenya Limited, Co-operative Bank of Kenya Limited, Eco Bank and Kenya Tourist Development Board. That the company has since fallen into substantial arrears with the loan at National Bank of Kenya Limited, which Bank has issued Notices to dispose of the property which was used as security to secure its loan. It is further stated that there is sufficient money in the account of the deceased held at Barclays Bank to pay off the arrears and save the property which is a valuable asset of the estate. Finally it is stated that it is in the best interests of the estate and beneficiaries that the cash be used to pay the debt and save the property. The application is further supported by the annexed affidavit of M O O and V Onyango J O sworn on 9th December, 2013.
3. I note from the record that the application is not opposed.
4. I have carefully considered the application as well as the affidavits on record, I observe that grant of Letters of Administration Intestate of all the estate of P L O was made by this Court to E A O and M O O, who undertook faithfully to administer such estate according to law and to render a just and true account thereof. Unfortunately, the said E A O has since died and a death certificate attached herein for the attention of this court confirms that the deceased died on 28th October, 2013. This unfortunate turn of events has prompted the Applicants to seek for an order that the said administrator herein be substituted with V O O, who according to paragraph 9 of the said affidavit is a beneficiary of the deceased's estate.
5. It is important to state that from the record the said grant of letters of administration has neither been contested nor objected to since the grant of the same on 2nd July, 2013 by this court.
6. The Applicants are also concerned that the deceased's company, **[particulars withheld]** Limited, which had taken loans with various financial institutions, namely National Bank of Kenya Limited, Co-operative Bank of Kenya Limited, Eco-Bank and Kenya Tourist Development Board, has fallen into substantial arrears with the loan at National Bank of Kenya Limited which has issued Notices to dispose of the property which was used as security to secure its loan. The said property is known as Kisumu Municipality/Block **[particulars withheld]**. They contend that there are sufficient funds in the account of the deceased held at Barclays Bank to pay off the arrears and save the property which is a valuable asset of the estate.
7. The law enjoins administrators to ascertain and pay out of the estate of the deceased all his just debts. In the instant case, the said property Kisumu Municipality/Block **[particulars withheld]** was used as security and the Bank has threatened to dispose of it.
8. In view of the foregoing, I find that the application herein is merited. In the circumstances, this court grants the prayers sought in this application so as to serve the ends of justice.

DATED, SIGNED and DELIVERED at NAIROBI this 25th DAY OF April, 2014.

W. MUSYOKA

JUDGE

In the presence of Mr. Odhiambo advocate for the petitioner.