



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
SUCCESSION CAUSE NO. 106 OF 2013

In the matter of the Estate of JOSIAH MBOGO NJERU (Deceased)

JANET MUKIMA KAMANGA.....PETITIONER/APPLICANT

VERSUS

ESTHER NJOKI RAVAEI NJERU.....PETITIONER/RESPONDENT

RULING

This Notice of Motion dated 20/1/2014 was filed alongside an application for revocation of grant. Both were filed on 21/1/2014. In this Notice of Motion the applicant Janet Mukima Kamanga seeks prayer No. 4 which states

“That this Honourable Court be pleased to order that the Respondent by themselves, their agents, servants and or anybody claiming through them be restrained by way of temporary injunction from accessing and or claiming any benefit, arising out of the Grant dated 30th May 2013 and in particular any NHIF and WIBA benefit pending the hearing and determination of the application for revocation of Certificate of Confirmation of Grant in the High Court Succession Cause No. 106 of 2013 at Embu formerly Runyenjes Succession Cause No. 216 of 2012.

The gist of the application is that the applicant who claims to have been a 2nd wife of the deceased herein (JOSIAH MBOGO JASON) was left out in the distribution of his estate vide the present succession cause.

Secondly she states that the Respondent has used the confirmed grant to access funds in the said estate without the benefit of the applicant. To confirm all these she annexed annexures JMK2, 3a, 3b, 4, 5.

The Petitioner/Respondent was served with both applications. She filed a replying affidavit to the main application for revocation dismissing the Applicant's claims. There is no affidavit specifically addressing the prayers in the Notice of Motion. Annexure JMK5 – is a letter from the Chief Mbeti Location showing that the deceased had two wives the applicant being one of them. In the application for grant a letter was written by the Chief of Ngandori East dated 24.10.2012 showing that the Petitioner Esther Njoki Ravael Njeru was the only widow.

In the fullness of time the Court will know which of them is the genuine one. It is also evident that the Petitioner/Respondent herein has already been paid money forming part of the deceased's estate (JMK3).

As indicated above there was no affidavit specifically addressing the issues raised in the Notice of Motion. Furthermore the Petitioner/Respondent though served with the hearing notice did not turn up for

the hearing on 23/4/2014. The Applicant's claims therefore remain uncontroverted.

This being a succession cause it is only fair that the deceased's estate is preserved until this matter is determined. Failure to preserve the estate would lead to an injustice in the event that the applicant succeeds and the Grant is revoked.

I therefore allow the application and grant prayer 3 of the application. Directions should be taken for the hearing of the main application for revocation of grant.

Cost in cause.

DELIVERED, DATED AND SIGNED AT EMBU THIS 24TH DAY OF APRIL 2014.

H.I. ONG'UDI

J U D G E

In the presence of:-

Mr. Njoroge for Applicant

Respondent

Kirong CC