

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.748 OF 2011

IN THE MATTER OF THE ESTATE OF PETERSON APOLLOS KARANI (DECEASED)

JANE L.W. KARANI.....
PETITIONER

VERSUS

MONICA NJERI KARANI
RESPONDENT

RULING

Jane L. W. Karani petitioned this court to be issued with a grant of letters of administration intestate in respect of the estate of Peterson Apollos Karani – Deceased. The deceased died on 19th January 2011 at Coptic Hospital in Nairobi. The Petitioner listed the following as the dependants of the deceased: Herself, as the widow, Anthony Gakuhi Karanja, Samantha Wabia Karani, Christine Wanjiku Karani, Lilian Njamiu Karani and Michael Charles Mungai. The above were listed as children of the deceased. When the petition was gazetted, Monica Njeri Karani (the Respondent), Simon Maina Karani and Dickson Kamau Karani objected to the Petitioner being issued with the said grant of letters of administration intestate. The Respondent claimed that she was the second wife of the deceased. The other objectors were the sons of the deceased. She took issue with the fact that the Petitioner had excluded her and her children in the list of dependants of the deceased. She also cross-petitioned the court to be issued with a grant of letters of administration intestate. That dispute is yet to be heard and determined by the court.

Meanwhile, the Petitioner did on 8th February 2012 file an application pursuant, inter alia, to the provisions of **Sections 7 and 82** of the **Law of Succession Act** and **Rules 9, 59, 63, 70 and 73** of the **Probate and Administration Rules** seeking orders from this court to the effect that the sum of Kshs.150,637.15 held by Kenya Tea Development Authority in the deceased's Growers Account No. **[particulars withheld]** be released to Kenya Commercial Bank Account No. **[particulars withheld]** for the payment of the loan in the account and subsequently thereafter all monies due to the deceased be paid to the said loan account until the loan is fully paid. The application is supported by the annexed affidavit of the Petitioner. She states that prior to his death in 2010, the deceased borrowed the sum of Ksh.500,000/- from Kenya Commercial Bank with a view to developing one of his plots at Kayole. The amount was disbursed and used to develop the property. The loan was not repaid at the time of the deceased's death. The Petitioner was therefore asking the court to allow the tea proceeds due to the deceased to be deposited in the said loan account to offset the outstanding loan. She urged the court to grant the application so as to preserve the estate of the deceased.

The application is opposed. The Respondent filed a replying affidavit in opposition to the application. She stated that the application was not made in good faith because the Petitioner receives rental income from properties belonging to the estate of the deceased which is sufficient to service the loan. It was her view that the application was filed specifically to derail her objection to the Petitioner being issued with a grant of letters of administration intestate. She was anxious that her said objection be heard expeditiously because she was not benefiting at all from the estate of the deceased. She urged the court to dismiss the application with costs.

When the matter came before court, the respective counsel for the parties requested the court to write its ruling on the basis of the application and the replying affidavit filed. Mr. Nyakiangana for the Petitioner

also filed written submission in support of the application. The issue for determination by this court is whether the Petitioner made a case for this court to issue the order sought in the application. Having carefully perused the proceedings and pleadings in this succession cause, it was clear to the court that no other issue can be determined by the court before the issue of who the dependants of the deceased are. Claims and counter-claims have been made in this succession cause. It includes allegations of forgery. The police was roped in to investigate some of the allegations of forgery against some dependants. This court did on 20th February 2012 (Njagi J) issue an order to the effect that the issue of the alleged forgeries be dealt with and finalized so that the road may be cleared for the hearing and determination of the dispute. It is instructive that because of the dispute, no grant of letters of administration intestate has been issued in this Cause. The present application seeks orders which would in effect amount to the distribution of the assets comprising the estate of the deceased before a grant is issued and confirmed.

In the premises therefore, this court agrees with the Respondent that the prayers sought in the application cannot be granted until the issue of who the dependants of the deceased is determined. The application dated 8th February 2012 is therefore prematurely before this court. It is ordered dismissed but with no orders as to costs. The parties are ordered to list the cause for directions so that the actual dispute may be heard and determined expeditiously. It is so ordered.

DATED AT NAIROBI THIS 23RD DAY OF APRIL, 2014

L. KIMARU

JUDGE