



REPUBLIC OF KENYA

IN THE HIGH COURT AT BUNGOMA

CIVIL CASE NO.17 OF 2013 (O.S)

G W M APPLICANT

VRS

THE ADMINISTRATOR GENERAL

**DEPARTMENT OF THE PUBLIC TRUSTEE 1ST
RESPONDENT**

DIRECTOR OF PENSIONS 2ND RESPONDENT

JUDGMENT

1. G W M, the Plaintiff, is the father of the late J W M who died in Bungoma in February, 2004 (hereinafter “the Deceased”). On 15th June, 2004, the Plaintiff was granted a Grant of Letters of Administration ad colligenda bona under Section 67 (1) of the Law of Succession Act Cap 160 by the High of Kenya at Bungoma. That grant was limited to filing a suit and collection of the assets and preserving the Estate of the deceased.

2. Later, the Plaintiff went to the Principal Magistrate's Court, Webuye (hereinafter “the Webuye Court”) and obtained a full grant of Letters of Administration on 9th March, 2011 in P&A Cause No.24 of 2010. According to the Certificate of Confirmation issued on 9th December, 2011, by the Webuye Court, the estate of the deceased comprised of a property known as [particulars withheld], Pension and Civil Servants Group Accident Claim. In his Affidavit sworn on 18th June, 2013 in support of the Originating Summons herein, the Plaintiff disclosed that the Pension was for Kshs.542,850/= which had long been paid to him. He also disclosed that the Civil Servants' Group Accident claim is for a sum of Kshs.930,660/=.

3. This clearly shows that the Principal Magistrate's Court, Webuye which issued the Grant of Letters in March, 2011 did not have any jurisdiction under Section 47 of the Law of Succession Act Cap 160 Laws of Kenya to preside over and determine the matters touching on the estate of the late J W M. Why the Plaintiff chose to go to that court for the said grant having originally approached the High Court for the limited grant is not clear.

4. Before me, is the Plaintiff's Originating Summons dated 18th June, 2013 brought under Section 3A of the Civil Procedure Act, and Order 37 Rule 1 (e) and (g) of the Civil Procedure Rules. It seeks orders to the effect that the proceeds from the Civil Servants Group Accident Cover amounting to Kshs.930,660/= be released to the Plaintiff by the Public Trustee. The Plaintiff contends that as the administrator of the estate of the deceased he is entitled to receive the said amount. I have already voiced my reservation about the legality of the grant issued by the Webuye Court.

5. The Public Trustee opposed the suit on the ground that the Civil Servants Group Accidents was not part of the estate, that the said sum is payable to the dependants of the late J W M. Mr. Njenga, Learned Counsel for the Public Trustee submitted that; from the evidence available one D S was a son of the late J W M. A letter dated 29/06/2004 by the District Commissioner, Bungoma and a letter dated 26/07/2006 by the Plaintiff, were produced by the 1st Respondent. Those letters disclosed that there was a dependent of the late J W M. The name of that dependent was given as D S.

6. In his said letter of 26th July, 2006 to the 1st Respondent, the Plaintiff stated of the deceased that:-

***“3. Before his death, he had bought land and built a good house on it in Bungoma Municipality for which I hold a title deed. In order to commemorate and maintain the estate of my late son, I should put up a few decent rental houses on this plot to cater for the future of my grandson who is now a total orphan.*”**

***4. My grandson who is under my personal care is suffering from acute epilepsy (kifafa) and therefore, I need to take him for specialized treatment as early as possible. In view of this, I shall be grateful to receive your cheque for Kshs.930,600/= without any further delay. Your prompt attention into this matter will be appreciated.*”**

7. In his Affidavit in support of the summons, the Plaintiff stated in paragraphs 5, 6, 7, 8, and 9 as follows:-

***“5. That during the burial ceremony for my son J W M on 21st February, 2004 at Webuye, a lady by the name GN brought a boy named D S aged 17 years and alleged that the boy was the son of the deceased.*”**

***6. That my family members and I had never seen the lady or son during J's lifetime. He never introduced us to either the lady or the boy.*”**

***7. That after the burial I together with family members and clan elders started investigations to establish whether D S was the son of the deceased.*”**

***8. That on or about 1st February, 2005 G N died at her home in Bungoma, and while I was attending her funeral another lady R O from Kisii claimed that her son who had gone to America had two sons with G and that D S was her grandson.*”**

***9. That I then handed over D S to R O and the parents of G N in the month of 1st February, 2005.....”*”**

8. When submitting before me on 12th February, 2014, the court asked the Plaintiff a very specific question as follows:-

***“Can you explain after having doubts with the boy who was brought to you at the burial of your son, what you did until the mother died as regards the alleged son.”*”**

His answer was categorical.

***“The son stayed with us for about a week and we then told him to go and stay at this mother's place. That is all that I did. I have never seen him from that date.”*”**

9. From the foregoing, it is clear that whilst the Plaintiff told the court that the child was returned to the mother after one week, that is, in February, 2004, in his sworn Affidavit in support of the present Originating Summons, the Plaintiff stated that he handed over the child to one R O and the parents of G N at the burial of the latter in or about February, 2005. As if that is not enough, in his letter dated 26th July, 2006 to the Public Trustee, his grandson who was suffering from epilepsy was under his care and that he

needed the Kshs.930,600/= to take that child to specialized treatment at the earliest.

10. What would the grandson be doing under his care in July, 2006 if he had handed him over to one R O in February, 2005? To my mind, what comes out is that the Plaintiff is clearly untruthful. He will do and assert anything that will benefit or allow him access the said sum of Kshs.930,660/=. My view is that a dependent by the name D S M, a fact which the Plaintiff did disclose in the early days after the death of J W M is about to be disinherited. Indeed, there is nothing to show that the said dependent was involved in the Succession Cause that was undertaken at the Webuye Court. The Plaintiff has already received and used the pension of Kshs.542,850/= without reference to that dependent.

11. It should be noted that whilst the letter of the District Commissioner, Bungoma on 29th June, 2004 indicated that D M was aged 11 years at the time, the Plaintiff claims that he was 17 years then and that now he is 26 years. This Court is alive to the fact that the Plaintiff was nominated the next of kin by the deceased. That however, does not give him exclusive rights to the entire estate of the deceased. The dependents of the deceased in terms of Section 29 of the Law of Succession Act have an entitlement to the estate.

12. From the foregoing, I am satisfied that the Plaintiff is not being truthful. I need not reiterate here what I have already stated commencing with the changing from the High Court, Bungoma to Webuye Court for the Succession Cause. Until the Plaintiff produces in court the dependent D S, the proceeds of the Civil Servants Group Accident Cover should not be released.

13. In the circumstances, I find the suit to be without merit. The same is hereby dismissed with costs.

DATED and DELIVERED at Bungoma this 19th day of May, 2014.

A. MABEYA

JUDGE