



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 143 OF 2009

IN THE MATTER OF THE ESTATE OF N M M (DECEASED)

D N K.....APPLICANT

VERSUS

J K M.....1ST PETITIONER

B W M.....2ND PETITIONER

R U L I N G

The applicant through an application dated 18th September, 2013 brought under Section 94,82,83(e) 47, and 49 of the Law of Succession Act sought that the petitioners do distribute the shares of minors L K and E M to the applicant to hold in trust for them till they attain the age of majority amongst other prayers. That before the application could be heard the applicant filed the present application dated 10th February, 2013 under Section 47 of the Law Succession Act and Rule 73 of the Probate and Administration Rules seeking that the honourable court do allow Minor L K to become a party in the application dated 18th September, 2013 since she had now attained the age of majority. The application is based on the grounds on the face of the application as follows:-

- a. ***THAT the minor L K on whose behalf this application has been brought was below the age of 18 when the application was filed.***
- b. ***THAT the said L K has not attained the age of majority and is well able to ventilate her interests in this suit as a beneficiary.***
- c. ***THAT no prejudice will be caused to the respondents if this application is allowed.***

The application is supported by affidavit deponed upon by the applicant in which she had deponed that L K is her daughter and has now attained the age of majority and is able to take care of her own interest. She attached a copy of birth certificate marked as “DNKI” and “DNK2” being application for issuance of National Identity Card. She deponed that by allowing the application the respondents won’t be prejudiced.

The respondents filed a replying affidavit opposing the application on the grounds that the grant has already been issued and administration has been done in accordance with the will. They also argue that the applicant has become a vexatious applicant since she deserted her husband though she is not a beneficiary of the deceased estate. They argued that the application made for L K is incompetent and defective. That no party is allowed to gatecrash into succession proceedings except in accordance with

the provisions of the Succession Act. When the application came up for hearing Miss Nelima learned Advocate appeared for the applicant whereas Mr. Rimita learned Advocate appeared for the respondent. That both counsel made their oral submissions in support and in opposition of the application.

I have carefully considered the application and affidavits in support. I have also considered the counsel respective submissions. The issue for determination is whether the applicant's application is merited and whether it ought to be granted.

Section 47 of the Law of Succession Act provides:-

“47. The High Court shall have jurisdiction to entertain any

application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient:

Provided that the High Court may for the purpose of this section be represented by resident magistrates appointed by the Chief Justice.”

Further under **Rule 73 of the Probate and Administration Rules** it is provided:-

“73. Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

In view of the above-mentioned provisions I find and hold that the application is properly before this court and the court has jurisdiction to entertain and determine the application for the ends of justice and/or to prevent abuse of the process of the court. In the instant application there is no dispute that L K is one of the beneficiaries to the deceased estate and that the grant was confirmed confirming her share when she was a minor. That the court held that her share was to be held in trust and be administered by the executor until the age of majority. There is no dispute that as per her birth certificate that she has attained the age of majority. She now wants to be made a party so that she can ventilate her interest in this suit.

Article 50 of the Constitution of Kenya,2010 provides:-

“50. (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”

In view Article 50 of the Constitution and L K having attained the age of majority I find that in the interest of justice and fair hearing the applicant's application should be granted as the respondents won't be prejudiced in any way.

I therefore find the applicant's application to be meritorious and based on sound grounds, consequently the application is allowed.

I therefore make the following orders:-

- 1. That L K be and is hereby allowed to be a party in the application dated 18th September, 2013 as she has now attained the age of majority and is able to ventilate her interest in this cause in her capacity as a beneficiary.***
- 2. That application dated 18th September, 2013 be amended within the next 21 days from today to enjoin L K as a party.***
- 3. That upon compliance with Order(2) above application be set down for hearing and determination on merits.***
- 4. That costs of the application be in the cause***

DATED, SIGNED AND DELIVERED IN MERU THIS 16TH DAY OF MAY, 2014.

J. A. MAKAU

JUDGE

Delivered in open court in the presence of:

1. Miss Nelima for applicant
2. Mr. Rimita for the respondent

J. A. MAKAU

JUDGE