

REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
FAMILY DIVISION
PROBATE AND ADMINISTRATION
SUCCESSION CAUSE NO. 28 OF 2008
AND SUCCESSION CAUSE NO. 2 OF 2012
(CONSOLIDATED RULING)

IN THE ESTATE OF: HADAA LALI HADAA

1. There are two Succession Causes filed in respect of the estate of Hadaa Lali Hadaa. The first cause No. 28 of 2008 was filed by Mohamed Hassan Lali (identity card No. 0747949/63) claiming to be the grandson and sole heir of the deceased who allegedly died intestate in 1950. The assets listed in the said cause include parcels of land described as Malindi Plot Nos. 507,331, 458 and 207.
2. On 11th March, 2011 a caveat was filed by one Jemshid Ali Zuhudi through Michira Messah & Co. Advocates pursuant to Rule 15 of the Probate and Administration Rules. No grant was issued. However, on 17th October, 2012 an application was made to confirm a grant of letters of administration purportedly made to the petitioner on 12th July, 2010. There is no record of such grant on the file even through there is a faded copy of gazette notice No. 6661 of 20th June, 2008 being notice of the lodging of the petition for grant of letters of administration by the Mohamed Hassan Lali. The petition was not supported by basic documents such as a letter from the chief or a copy of the death certificate.
3. The latter was the reason given by the Deputy Registrar to an inquiry by the firm of Kemboy & Ogola Advocates for the fact that no grant had ever been issued in Succession Cause No. 28 of 2008. The Deputy Registrar's letter is dated 20th June, 2013.
4. Subsequently, the petitioner filed several photocopied documents apparently to justify the issuance of a grant, including a letter purportedly written by the chief in charge Malindi Town, one Abubakar S. Mohamed dated 23rd May, 1996 and a copy of a certificate of death No. 314097 dated 4th June, 2014 in the respect of a male deceased aged 50 years at death on 1st February 1950, named Hadaa Lali Hadaa. The cause of death is given as malaria and the place of death as Shella. The petitioner is now seeking a confirmation of the grant allegedly issued to him in the cause.
5. Succession Cause no 2 of 2012 was filed on 3rd January, 2012 by one Khadija Shee Ali (Identity Card No. 8527614) through her purported attorney, Jemshid Ali Zuhudi and also an alleged beneficiary of the estate of Hadaa Lali Hadaa. A letter dated 13th December, 2011 by Chief, Malindi Town is attached to the Petition. The said letter lists more alleged beneficiaries of the estate. The death certificate filed alongside the petition is No. 155734 in respect of a female deceased who died on 1st December, 1950 at Shella, aged 75 years of cancer, and is dated 3rd March, 2011. Listed among assets of the deceased are 13 plots including the four earlier listed in Succession Cause no 28 of 2008.
6. This court only made a connection between the two matters because of the application made by the petitioner in Succession 2 of 2012 seeking to restrain the petitioner in Succession 28 of 2008

from interfering with Malindi plot no. 959 which is allegedly part of the estate of the deceased Hadaa Lali Hadaa. The said application was resisted by Mohamed Hassan Lali who denied interfering with the plot no 959 which he said belongs to the Waqf Commissioners by virtue of the Waqf of Hadaa Lali Hadaa. He attached several documents in this regard. He claims that he has been issued with a grant for Letters of Administration in Succession 28 of 2008 and therefore argued that no orders should be made to bar him from carrying out his lawful duties as an administrator.

7. I have carefully perused the record in both succession causes. I am satisfied that despite the discrepancies in the two death certificates apparently procured by the two petitioners at different times, they relate to the same estate, namely the estate of Hadaa Lali Hadaa. From the material contained in the two files, the deceased was a muslim. Therefore by virtue of Section 2(3) of the Law of Succession Act the succession cause should have been filed before the Kadhi's court and not the High Court. There is no evidence whatsoever that the petitioner in Succession 28 of 2008 was ever issued with letters of administration in respect of the estate in question.
8. As for the petitioner in Succession 2 of 2012, Khadija Shee Ali, she ought not to have filed a second petition with the full knowledge of the pre-existing succession cause no. 28 of 2008. Whether she disputed the petitioner's bona fides or not is beside the point. Secondly she cannot purport to approach the court by way of a purported attorney.
9. It has now come to my attention that the petitioner in Succession 28 of 2008 filed a suit in the High Court being **Malindi HCC 116 of 2010 Mohamed Hassan Lali v Abudlrazaka Haji Adam and 3 others** in his capacity as the alleged administrator of the estate of Hadaa Lali Hadaa. As the deputy registrar wrote in her letter of 20th June, 2013, no letters of administration have been issued to the petitioner in succession cause no. 28 of 2008. I believe only the petitioner can explain the source of the copy of Grant of Letters of Administration now on record, and dated 12th July, 2010 and purporting to have been signed by my predecessor, Omondi J. There is no original copy of the said grant in the court record.
10. Considering all the foregoing, I am of the view that the two succession causes were improperly filed before the High Court as they related to the estate of a deceased adherent of the Muslim faith. And in light of the many anomalies therein, I am convinced that both petitioners are guilty of abusing the court process, at the very least. The two applications in the respective causes cannot be entertained by this court.
11. In order to forestall any further abuse and to protect the integrity of the court process, I order that both Succession Cause No. 28 of 2008 and 2 of 2012 be struck out. Any person or persons who feel that they are entitled to take out proceedings regarding the estate of Hadaa Lali Hadaa, must do so before the Kadhi's court. A copy of this ruling is to be placed in both succession causes and **Malindi HCC No. 116 of 2010.**

Delivered and dated this 16th day of **June, 2014** in the presence of: Mr. Shujaa for Mohamed Hassan Lali.

Court clerk – Samwel

C. W. Meoli

JUDGE