

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO. 399 OF 2002

IN THE MATTER OF THE ESTATE OF BRASTON MAINA NJEHIA (DECEASED)

PERIS WATERE MAINA.....1ST PETITIONER/APPLICANT

VERSUS

GODFREY N. MAINA.....2ND PETITIONER/RESPONDENT

RULING

The summons dated 31/5/2013 was filed by the 1st Petitioner, Peris Watere Maina who seeks an order that the letters of administration confirmed to her and the 2nd Petitioner, Godfrey Njihia Maina on 5/10/2007 be rectified with the result that the 1st Petitioner be issued with a fresh grant of letters of administration and a certificate of confirmation in her name to the exclusion of the 2nd Petitioner. The 1st Petitioner is the widow of the deceased while the 2nd Petitioner is her son and son to the deceased. The grant confirmed on 5/10/2007 was issued to the joint administrators because there were three minor dependants namely; Jerusa Njeri, George Wamithi and Joseph Gichimo. They are now all adults. The grounds upon which this application is premised is that the 1st Petitioner being a widow of the deceased ranks first in priority when it comes to issues of administration of the deceased's estate and that there is no requirement for a 2nd administrator since all the beneficiaries are now over 18 years old; that the 2nd administrator has made distribution difficult because he has refused to co-operate and fears that the 1st Petitioner may remarry and go away with the deceased's estate but the 1st Petitioner only wants to hold in trust as she is already 62 years old. Counsel for the applicant urged that the application is not res judicata because **Sections 6 & 7 of the Civil Procedure Act** are not applicable to succession matters; that **Rule 63 of the Probate & Administration** specifies which **Civil Procedures Rules** are applicable to succession matters; that despite the ruling delivered by J Ouko in relation to this matter, the applicant he sought to bring this application.

The 2nd administrator opposed the application and relied on his affidavit denying all allegations leveled against him. He averred that the 1st administrator has frustrated the compliance with this court's order of 22/10/2010 directing that the estate be distributed and has refused to attend meetings meant to resolve the said issue of distribution. It is his view that the consent exhibited was signed by coercion from the applicant; that his brother Joseph Gichimo who is said to have disappeared is alive and works in Nyeri; that the applicant's allegations that the 2nd administrator intends to defraud the estate are unfounded and the best way to revolve the wrangling over the estate is through distribution.

Having considered the application, it is apparent that J Ouko did consider a similar application dated 17/12/09. The said application was based on the grounds that the minor dependants had reached the age of majority and that if the 1st administrator died, the other dependants would suffer at the hands of the 2nd administrator. They are the same grounds advanced in the instant application. The court directed that: **“the applicant and the 2nd administrator are directed pursuant to Section 83(f), (g) and (i) of the Law of Succession Act, to produce a full inventory of the completed administration within one month.”** The court thereby dismissed the application having found no merit.

Why did the court dismiss the application? The court agreed with the 2nd administrator that the solution to this matter did not lie in exclusion of the 2nd administrator from the grant but the distribution of the

estate since the certificate of confirmation had been issued way back 3 years earlier and there were no longer any minor dependants. It is now 7 years since grant was confirmed. I do agree that the doctrine of res judicata does not apply to succession matters as **Rule 63** of the **Probate & Administration Rules** clearly spells out the sections of the **Civil Procedure Act** that are applicable to succession matters. However the filing of this application was unnecessary and in my view an abuse of the court process and a waste of the court's time. I totally agree with J Ouko's ruling. The parties have not demonstrated that they complied with the court's order since the order was made way back on 22/10/2010. The administrators must comply with the said order. If the 2nd administrator does not agree with the distribution, then the court will go ahead and do it. So that no more time is wasted, the parties are directed to comply with the court's order of 22/10/2010 within 60 days hereof. The result is that the 1st administrator's application is dismissed.

DATED and DELIVERED this 31st day of July, 2014.

R.P.V. WENDOH

JUDGE

PRESENT:

Mr. Karanja Mbugua for the 1st Petitioner/Applicant

The 2nd Petitioner/respondent in person

Kennedy – Court Assistant