

Ministry of Finance showing that she is the person receiving the deceased's pension from the same Ministry. She indicates, that the shares of her son with the deceased (i.e O W W) ought not be held in trust by the petitioners and that money being drawn by the petitioners from the gratuity account do not benefit the said O W W.

In opposing the application, the petitioners filed a replying affidavit dated 10th March, 2014 deposed by the first petitioner in which they aver inter-alia that the applicant had a casual relationship with the deceased while she was a form two student and this resulted in O W W being conceived. That, O W W was brought to the deceased's home by the applicant in December, 1997 when he was just seven (7) months old and was hence forth raised by the deceased and the first petitioner as their eldest (first born) child alongside other three children of the first petitioner with the deceased. That, the applicant and the deceased never married nor lived together as husband and wife as such their intimate relationship could not be construed as being a marriage despite an issue being conceived. That, the first petitioner promptly after the death of the deceased disclosed that O WW was among the deceased's children and therefore a beneficiary of his estate. That, the child is well provided for by the Public Trustee in terms of fees. That, the child's welfare is well taken care of from the deceased's pension. That, the applicant who is not a beneficiary of the estate as she was never married to the deceased has haked a scheme to frustrate the petitioners in the administration of the estate such that she has caused the freezing of the monthly gratuity payments. The petitioners contend that this application is brought in bad faith with a view to disrupting the proper management of the estate of the deceased.

At the hearing of the application, learned counsel **Mr. Barongo**, appeared for the applicant while learned counsel, **Mr Karani**, appeared for the petitioner. Written submissions were presented by both sides and have been duly considered by this court.

The basic issue for determination is whether the applicant has shown good course for the annulment of the grant and whether she is entitled to inclusion as a beneficiary and/or administrator in the estate of the late E W.

With regard to annulment, the applicable provision of the Succession law is section 76 of the Succession Act which provides for instances in which a grant may be revoked. On such instance if the administration of the estate is not effected diligently by the appointed administrator.

Herein, the applicant alleges that the petitioners have failed to proceed diligently with the administration of the estate but has not provided satisfactory evidence to establish the fact. She claims that a beneficiary of the estate who is their son with the deceased is bound to be oppressed by the petitioner yet it is clear that he was included as a beneficiary in the estate by the petitioners and receives equal treatment with other children of the deceased with the first petitioner. There was no evidence provided by the applicant showing that her son is being oppressed by being denied basic needs. On the contrary, the petitioners have shown by necessary document (see, annexure CA1 "3") in the replying affidavit that funds from the Public Trustee are utilized for the benefit of all the children of the deceased including the applicant's son. A similar document was forwarded to the applicant possibly in recognition of the fact that she was the mother of OWW. She has however failed herein to provide good or any ground for the annulment of the grant.

With regard to whether the applicant should be included as a beneficiary and/or administrator of the estate, she has floated the fact that the deceased considered her to be his wife. She thus claims to have been a "second wife of the deceased with whom they sired a son, i.e OW W, a beneficiary of the estate. Indeed, no dispute arose herein with regard to the deceased being the father of O and the applicant, his mother. This fact was already admitted by the first petitioner who indicated that the child was brought into her matrimonial home by his mother (applicant) when he was only seven (7) months old.

At the time of the death of the deceased, the child according to the documents availed herein was about fourteen (14) years and was treated as the first son of the deceased meaning that, he was

brought up and raised by the first petitioner and the deceased since his infancy. The applicant never took any responsibility with regard to the child within the period. She played no significant part in raising the child even though she was his mother.

These are facts which largely remained undisputed. The applicant has not even alleged or shown that she was a dependant of the deceased and the only reason why she alleges to be a beneficiary of the estate is simply that the records from the Public Trustee indicated that the deceased treated her as his wife. Such treatment remained only in paper but not by words and deeds as there was no demonstration whatsoever from the applicant confirming for all intents and purposes that she was a wife to the deceased. The fact that the two sired a child did not translate to marriage. The child is a beneficiary of the estate and his benefits are transmitted to him though his biological mother i.e the applicant.

This application is therefore without merit in its entirety. It is accordingly dismissed but each party shall bear their own costs.

J. R. KARANJA

JUDGE

28/10/2014

[Read & signed this 28th day of October, 2014]