



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI AT NAIROBI
FAMILY DIVISION
MISCELLANEOUS APPLICATION NO.122 OF 2011
IN THE MATTER OF THE ESTATE OF D N K (DECEASED)

RULING

1. Through her advocates Mrs. R W N (the applicant) applied to this Court on 18th November 2011 for orders that her husband, D N K, be presumed dead and further that leave be granted to her petition the Court for issuance of a Grant of Letters of Administration intestate.

2. The grounds on which the application was made state that D N K went missing in the year 2004 and in spite of efforts by the applicant and family members to trace him, he has not been found. In the meantime the ability of the applicant and her children who were sired by D N K to benefit from the properties of D N K are stifled, and the properties are “running to waste”.

3. In an affidavit sworn on 31st October 2011 and in a further affidavit sworn on 18th November 2011, the applicant averred that she and D N K were blessed with eleven children. Paragraph 4 of her affidavit sworn on 31st October 2011 refers to “our father” as having been of unsound mind and to “we heard from our relatives at Nairobi that they had seen him in Nairobi but unfortunately he has never been seen again and our efforts to trace him have proven futile.” If it is not explicitly stated that “our father” is intended to refer to D N K, the reference to “we heard from relatives ...” and “our efforts to trace him” are not couched with clarity and they can be said to be nebulous and vague. Yet in the affidavit sworn on 31st October 2011, the applicant avers that her husband, D N K, went missing seven (7) years ago

4. In her further affidavit sworn on 18th November 2011, the applicant avers that D N K was in 2004 a person of unsound mind and efforts to trace him since he disappeared in 2004 have come to naught. Report to the police has been made and radio announcements have reported his disappearance.

5. The application is premised on rule 10 of The Probate and Administration Rules which states:-

“An Application for an order presuming the death of a person of whose death there is no sufficient written evidence and to whose estate a grant is sought shall be made by summons to the court and shall be supported by an affidavit setting out the grounds of the application.”

6. The Court has power to make a declaration that a person who has gone missing for seven years is presumed dead and upon such declaration, the court can proceed to entertain a petition for grant of letters of administration intestate in respect of such person.

7. Has the applicant satisfied the court that D N K should be presumed dead?

8. Rule 10 (supra) requires an applicant applying for an order presume the death of a person to show that

(i) there is no sufficient written evidence of the death of the person and

(ii) the person has an estate and

(iii) a grant of letters of administration is sought in the application

(iv) the person has gone missing for 7 years or more

(v) efforts to trace him have come to naught.

9. In the instant application, (ii) and (iii) above have not been satisfied.

10. In the circumstances, the application fails. It is dismissed with no order as to costs.

11. The advocates for the applicant will guide the applicant properly to enable her to obtain the orders is desirous of.

G.B.M. KARIUKI, SC

JUDGE

Delivered at Milimani Law Courts, Nairobi, on this 19th day of December 2014 by the Honourable Justice W. Musyoka on behalf of Justice G.B.M. Kariuki.

JUDGE

COUNSEL APPEARING

Mr. Mburu Machua Advocate, of Mburu Machua & Co. Advocates for the applicants

Court clerk – Mr. Wahinya Kugwa