



REPUBLIC OF KENYA

High Court at Meru

Succession Cause 44 of 2013

IN THE MATTER OF THE ESTATE OF GILBERT KIBITI RINCHUNI..DECEASED

ESTHER MUGITO RUTERE.....APPLICANT

VERSUS

EUNICE NCEKEI.....RESPONDENT

RULING

The applicant through Chamber Summons dated 23rd January, 2013 brought under Section 54 of the Law of Succession Act and Rule 14 of the 5th Schedule - Law of Succession Act is seeking that court do issue letters of limited grant to EUNICE NCEKEI KABITI for the purposes of her being joined in CMCC No. 137 of 2012 and that costs of the application be borne by GILBERT KIBITI RICHONI. The application is based on the grounds on the face of the Chamber Summons and supported by the affidavits of the applicant.

The application is opposed by the respondent. The respondent has filed grounds of opposition dated 6th March, 2013.

The court has considered the oral submissions by both Counsel. It has also considered the pleadings. The affidavits and grounds of opposition and opposing positions of both parties. The respondents grounds of opposition are that the Chamber Summons is procedurally flawed as there has been no citation or petition filed in court to form the basis for issuance of limited letters of administration in over the deceased estate and secondly there is no proof of death of GILBERT KIBITI RINCHUNI and thus the orders sought are misplaced and lastly the Chamber Summons is incompetent ab initio and ought to be struck out.

The applicant in her application has averred that she is a creditor to the deceased estate having bought a piece of land from the deceased during his lifetime. Consequently she sued him in CMCC 137 of 2012 but died before the suit could be heard and determined. That the deceased is survived by the wife and the applicant wishes her joined in the suit as the deceased legal representative. The applicant sought the wife of the deceased to be granted letters of administration limited to the purpose of the Civil Suit No. 137 of 2012. The applicant averred that the deceased is truly dead and annexed a copy of Chief's letter as annexure "EMRI" showing the deceased herein passed on 30/7/2012 vide death certificate No.164877. The applicant further averred as she is not a relative to the deceased she is unable to obtain the deceased death certificate but the Chief has in his letter quoted the death certificate number which the applicant believes to be true.

In the instant matter the applicant's assertion that the deceased is dead and that there has been pending suit between the deceased and the applicant has not been controverted by way of affidavit. The Chief's

letter quoting even the deceased death certificate number has not been challenged and/or denied by way of an affidavit. I therefore find that assertion by the applicant has not been controverted and is indeed true. The deceased though no death certificate had been attached has on balance of probability been proved to be dead. The Chief's letter is sufficient enough for one to conclude that the deceased is dead and a copy of death certificate is not the only way a death of a person can be proved.

Under Section 54 of the Law of Succession Act it is provided as follows:-

A court may accord the circumstances of each case, limit a grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule.”

Under Fifth Schedule of the Law of Succession Act Rule 14 it is provided as follows:-

“When it is necessary that the representative of a deceased person be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in the suit, limited for the purpose of representing the deceased therein, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in the cause or suit, and until a final decree shall be made therein, and carried into complete execution.”

In the instant application when it is necessary that a representative of a deceased person be made a party to a pending suit, and the person entitled in administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in the suit, limited for the purpose of representing the deceased therein.

My understanding of Section 54 of the Law of Succession Act is that according to the circumstance of each case the court may limit a grant of representation which it has jurisdiction to make, in any of the forms described in the fifth schedule.

In this case there is no evidence that the respondent has sought and obtained letters of administration. She is wife of the deceased and most likely entitled to administration of the deceased estate and she is most likely unable and/or unwilling act. There is equally a pending suit which has not been disputed. The fifth schedule under Rule 14 clearly states letters of administration may be granted to the nominee of a party in the suit, limited for the purpose of representing the deceased in a suit and until a final decree shall be made therein and carried into complete execution.

In the circumstances I do not find any provision requiring before doing so citation do issue or petition be filed. The grounds of opposition by the respondent hinges squarely on Procedural technicalities. I therefore find no merits in the respondent's grounds of opposition and I reject the same.

In the circumstances and in the interest of doing substantial justice and applying the provision of Section 1A and 1B of the Civil Procedure Rules, in determining all matters, the Court must bear the oxygen principle in mind, all things which are in conflict with the oxygen principle, must give way to the oxygen principle and aim at doing substantive justice.

In the circumstances the application is merited and I proceed to make the following orders:-

1. Letters of Limited Grant do issue to EUNICE NCHEKEI KIBITI limited for the purpose of her being joined in CMCC NO. 137 of 2012(Meru).

2.Costs of the application be in the cause in CMCC No. 137 of 2002.

DATED, SIGNED AND DELIVERED AT MERU THIS 14TH DAY OF MARCH, 2013.

J. A. MAKAU

JUDGE

DELIVERED IN OPEN COURT IN THE PRESENCE OF:-

1.Mr. Arimba /b for Miss Mwangi for applicant

2.Mr. Mwirigi for the respondent

J. A. MAKAU

JUDGE