



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI LAW COURTS

Succession Cause 457 of 2010

ESTATE OF THE LATE LYDUSKA HORNIK PLATTO, alias LIDIA HORNIK PLATTO, LATE OF KAREN, WHO DIED ON 5TH AUGUST 2006 (DECEASED)

RULING

The Petition for a Grant of Probate of the Written Will of **LYDUSKA HORNIK PLATTO, alias LIDIA HORNIK PLATTO, LATE OF KAREN, WHO DIED ON 5TH AUGUST 2006 (deceased)** was applied for by **Dianella Moretti-Proske** and **Tillmann Wolfgang Proske** and their Petition was gazetted in the Kenya Gazette in Cause No.2039 of 2008 in the Gazette Notice of 31st July 2009. As no objection was made to the notice in the said gazettelement, a Grant of Probate of Written Will was made to the said Petitioners on 12th October 2009.

On 12th March 2010, **Richard Momanyi O. Emmanuel** filed a Petition in this court in Cause No.457 of 2010 in the Estate of **Lidia Hornik Piotto**, who is the deceased above named, in which he sought a Grant of Probate of Written Will. To the said application a copy of a Will purportedly executed on 23rd May 2003 by the deceased was annexed showing that Richard Momanyi O. Emmanuel was appointed as the Executor of the deceased's Will.

On 3rd February 2011 **Roberto Sainaghi, co-administrator** of the Estate of the deceased, applied to this court for an order that the Petition filed by **Richard Momanyi O. Emmanuel** be struck out on the ground that the Estate of the deceased already has administrators duly appointed in consolidated Succession Causes **No.2039 of 2008** and **2090 of 2008**. The application was supported by the affidavit of the said Roberto Sainaghi. On 7.12.2011, one Dennis Moturi Machana filed a Replying Affidavit sworn on that day. He averred in the Replying Affidavit that he had the authority of Richard Momanyi O. Emmanuel to swear the affidavit and was competent to do so. He describes himself in the Replying Affidavit as the bonafide sole beneficiary of the deceased. No reason was assigned why Richard Momanyi O. Emmanuel did not sign an affidavit himself.

Mr. N. Muturi, learned counsel for the Applicant, Roberto Sanaighi, and Mr. Gachuhi, learned counsel for Daniella Moretti in Cause No.2039 of 2008 and Mr. Kingara, learned counsel for Norman Kibue Nyongo, a beneficiary in Cause No.2039/2008, urged the court to allow the application and issue orders striking out the Petition filed by Richard Momanyi O. Emmanuel.

Mr. Maranga opposed the application and relied on the Replying affidavit filed by Dennis Moturi

Machana.

I have duly perused the application and the material and documents furnished by the parties. It is my finding that there is in place a Grant of Probate of Written Will issued in the Estate of the deceased. The Petition in which it was issued was gazetted publicly on 4th June 2010 in Gazette Notice No.2039 of 2008 and there being no objection, the Grant was issued. There cannot be two grants in respect of the same Estate. If the said Richard Momanyi O. Emmanuel has any interest in the Estate of the said deceased, the right course is to raise his claim in the cause in which the Grant was issued. To allow the Petition by Richard Momanyi O. Emmanuel to be sustained is to invite confusion in the Estate. The Petition for the Grant is as misplaced as it is superfluous. I have no hesitation in striking it out with costs to the Applicants. Any claim that Richard Momanyi O. Emmanuel may have can be raised in Succession Cause No.2039 of 2008 which is consolidated with Succession Cause No.2090 of 2008.

Dated at Milimani Law Courts, Nairobi, this 16th day of February 2012.

G.B.M. KARIUKI, SC

JUDGE

COUNSEL APPEARING

Mr. N. Muturi of N. H. & Co. Advocates for the Administrator/Applicant

Mr. Gachuhi Advocate for Dianella Moretti Proska

Mr. Kingara Advocate for Norman K. Nyongo

Mr. Kugwa - Court Clerk