



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
PROBATE & ADMINISTRATION 207 OF 2006

IN THE MATTER OF THE ESTATE OF JOHN BOSCO MARWAH (DECEASED)

R U L I N G

JOHN BOSCO MARWAH (the deceased) died on 8.11.2005 **Cecilia Angella Marwah** (referred to as “**Cecilia**” hereinafter) and **Andrew Koroso Marwah** (referred to as “**Andrew**” hereinafter) claimed to be widow and son of the deceased. They applied on 1.2.2008 for a Grant of Letters of Administration. They showed on their Petition for the grant of letters of Administration that the deceased was survived by Cecilia as the widow and her two sons, Andrew and Thomas and a daughter, Pauline and his mother, Maria.

On 3.4.2006, this court granted to Cecilia and Andrew a Limited Grant ad Colligenda Bona.

The Petition for a full grant was gazetted on 12.5.2006 under Gazette Notice Number 3407.

Following the said gazette, Jessica Atieno Onyango (who is hereinafter referred to as “Jessica”) applied by summons dated 22.6.2006, inter alia, for orders to restrain Cecilia from alienating or wasting the Estate especially the residential house No.1335/F8 at Hazina Estate Nairobi. Jessica claimed in her application to have been the deceased’s wife and to have a daughter known as Catherine with the deceased. She contended that she and her said daughter were beneficiaries of the Estate of the deceased.

On 31.10.2006, the Honorable Mr. Justice B.P. Kubo delivered a ruling on the application by Jessica. He found that there was no valid marriage between the deceased and Jessica and that the purported marriage was “null and void abinitio.” He made a finding that there was no dispute that Jessica’s daughter, namely, Katherine, was sired by the deceased and was therefore a dependant of the deceased. He also found that the house No.B35/F8 at Hazina Estate South B, Nairobi was part of the Estate of the deceased.

On 15.11.2006, Jessica made another application seeking inter alia, stay of further proceedings and revocation of the Limited Grant of Letters of Administration ad Colligenda Bona granted Cecilia and Andrew and the subsequent grant of Letters of Administration. Jessica based her said application on the ground that she was the second wife of the deceased. But as the court had already made a decision that Jessica was never a wife of the deceased as the purported marriage was null and void, the application dated 15.11.2006 was misplaced. The issue of the validity of marriage between the deceased and Jessica on which the application rested had been determined. To bring it up again in yet another application amounted to abuse of the court process. It was open to Jessica to appeal against the decision of the Honourable Justice B.P. Kubo (in which the learned Judge held that Jessicah was never the wife of the deceased). But Jessicah did not do so, nor was the decision ever reviewed or sought to be revived.

On 31.10.2007, **Carolyn Machara Marwah** (hereinafter called “**Carolyn**”) made an application seeking, inter alia, revocation of the Limited Grant of Letters of Administration and Colligenda Bona made on 31.3.2006 to Cecilia and Andrew. Like Jessica, she also sought an order to be made a co-administrator in the deceased’s estate. Like Jessica, Carolyn based her application on the ground that she was the 2nd wife of the deceased. She averred that the deceased had three wives, namely herself (Carolyn), Cecilia and Jessica. She also acknowledged in her application that Andrew was the son of the deceased.

As the court has already determined that the deceased was monogamously married under statute law and that he could not contract a customary law marriage to another woman or other women, it follows that the basis of the application by Carolyn, like that of Jessica, is misplaced. An order for revocation cannot be made on a ground that has already been found to lack merit in law.

However, whether Carolyn and her child/children as well as Jessica and her child/children are entitled to share in the estate of the deceased will depend on whether they were the deceased’s children and/or dependants. They shall be entitled to participate in the hearing for the distribution of the estate and to file affidavits and/or testify to prove their right to inheritance or dependency. After carefully perusing the applications, the affidavits filed and the submissions of the parties, it is my finding that there is not, in my view, good ground for revoking the Grant. Certainly it cannot be revoked on the basis of an allegation of fact or law that has been found to be incorrect or wrong.

I dismiss the two summonses dated 15.11.2006 and 31.10.2007. I order that the matter shall proceed to hearing of distribution of the Estate. All such persons as seek to be entitled to share in the Estate of the deceased including the Applicants shall be given opportunity to ventilate and prove their right to inheritance or dependency.

As this is a family matter, I decline to make any orders as to costs.

Dated at Milimani Law Courts, Nairobi, this 24th day of May 2012.

G.B.M. KARIUKI, SC

JUDGE

COUNSEL APPEARING

Mr. Caleb Jaoko of Achola Jaoko & Co. Advocates for the 1st Applicant/Objector

Mr. Albert Kuloba of A. S. Kuloba & Co. Advocates for the 1st and 2nd Administrators

Mr. Kugwa – Court Clerk