



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

Succession Cause 180 of 2008

IN THE MATTER OF THE ESTATE OF

ANNAH GATHONI KARANJA *alias*

ANN GATHONI KARANJA.....DECEASED

AND

KIRIGO KARANJA.....PETITIONER

RULING

On 21st July 2008, a grant of letters of administration intestate in respect of the estate of Ann Gathoni Karanja alias Annah Gathoni Karanja, deceased was made to Peter Ngatia Weru, hereinafter referred to as the Respondent. The grant was confirmed on 27th March 2009. Patrick Rukwaro Njogu the applicant, has taken out a summons for revocation and or annulment of grant dated 3rd February 2011 in which he sought to have the aforesaid grant revoked and or annulled. The summons is supported by the affidavit of the Applicant. The Respondent filed a replying affidavit he swore plus that of Hawa Wanjiru Ndirangu to oppose the summons. When the summons came up for hearing, learned counsels recorded a consent order to have the same disposed of by affidavit evidence and by written submissions.

I have considered the material placed before this court together with the rival written submissions. It is the applicant's submission that the Respondent did not disclose that the applicant being a grandson was a dependant of the deceased. It is also alleged that the Respondent failed to disclose that a written will had been left by the deceased. Attached to the applicant's affidavit is a copy of the alleged will. For the above reasons the applicant urged this court to find the respondent as a dishonest person hence unfit to administer the estate. The Respondent on his part urged this court to dismiss the summons for revocation of grant on the ground that the same lacks merit. The Respondent pointed out that succession proceedings in respect of this estate were first filed by Kirigo Karanja, the deceased's mother – Kirigo Karanja, the Respondent's sister hence the deceased was his niece. The Respondent stated that he took over the succession proceedings from his sister when she later passed away. On 22.02.2008 it is alleged that the late Kirigo Karanja wrote a will in which she bequeath all her properties to Hawa Wanjiru Ndirangu and Mary Eudiah Wanjiku Ngatia. The Respondent averred that he distributed the estate according to the will. The Respondent alleged that the Applicant being a son of the deceased's sister did not rank on priority hence he had no obligation to include him as a beneficiary of the estate. In the affidavit of Hawa Njiru Ndirangu, it is deponed that the applicant does not rank on priority to inherit his grandmother's sister's estate. She stated that the purported will exhibited in the Applicant's affidavit was not a valid will. It is argued that the Respondent did not conceal any material fact from court.

After a critical examination of the affidavit evidence and the submissions, it is now clear that the Applicant is seeking to have the grant revoked on the basis that the Respondent concealed from court the fact that there was a written will and secondly, on the basis that the Respondent failed to name him as a beneficiary. There is no dispute that the late Kirigo Karanja who was the deceased's mother had applied for letters of administration. It is also not in dispute that the deceased was survived by her sister Hawa Wanjiru Ndirangu. The applicant is a grandson of Hawa Wanjiru Ndirangu. In my view, Hawa Wanjiru Ndirangu, being a sister of the deceased ranked first on priority as against the Applicant. With respect, I agree with the Respondent's advocate that the Respondent was not enjoined to disclose the Applicant's relationship to the deceased since he least ranked in priority to inherit. I have looked at the document annexed to the Applicant's affidavit and I do not think the document can qualify as a written will as defined under the Law of Succession Act. The Respondent disclosed in this succession cause the fact that the chief refused to give him an introductory letter because he had failed to include the Applicant name as amongst the beneficiaries of the estate. In fact he visited the Chief's office three times but was denied the letter. In my view, the Respondent did not conceal anything material to this court. There is no doubt that letters of administration intestate in respect of the estate of Annah Gathoni Karanja, deceased were made to Kirigo karanja (now deceased) who proceeded to distribute it to the applicant's grandmother and her brother's wife in equal measures. In the end I am convinced the summons for revocation of grant dated 3rd February 2011 lacks merit. It is dismissed with no order as to costs since the dispute involved relatives.

Dated and delivered this 17th day of August 2012.

J.K. SERGON
JUDGE