



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO.553 OF 2009

IN THE MATTER OF THE ESTATE OF KRISHAN MURTI MAINI (DECEASED)

KJELL-MORTEN MAINI.....PETITIONER

R U L I N G

Krishan Murti Maini, the deceased to whom these succession proceedings relate died on 17th May 2007. Prior to his death, he had, on 15th December 1998 written his last will. In the said will, the deceased bequeathed to his wife Unni Maini, all his real and personal property. Pursuant to the **Norwegian Guardianship Act**, Unni Maini appointed Kjell Morten Maini to be her legal guardian. This court presumed that the **Norwegian Guardianship Act** is similar to what is understood in common law as the granting of power of attorney. Using this authority, the petitioner petitioned this court on 11th May 2009 seeking to be granted letters of administration with written will annexed for the purposes of administering the deceased's estate. What is interesting is that the petitioner, at all the material times before and after filing the petition, is resident in Norway. The petitioner wishes to have the letters of administration with written will annexed confirmed without being actually present in the country.

Mr. Amol, Counsel for the petitioner informed this court that it was not necessary for any petitioner or executor to be physically present in the country for the purposes of administering the estate of the deceased. He argued that pursuant to the provisions of **Section 56** of the **Law of Succession Act**, a person residing out the country cannot be excluded from administering the estate of a deceased person. He further argued that **Rule 28** of the **Probate and Administration Rules** grants power to the court to deal with cases where the deceased died out of the country. He urged the court to confirm the grant notwithstanding that the petitioner has never been to the country from the time the grant of letters of administration with will annexed were issued.

Section 79 of the **Law of Succession Act** provides as follows:

“The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative”.

Section 3(1) of the **Law of Succession Act** defines a personal representative as *“the executor or administrator of a deceased person”*. **Black's Law Dictionary, 8th Edition**, defines personal representative as:

“A person who manages the legal affairs of another because of incapacity or death, such the executor of an estate. Technically, while an executor is a personal representative named in a will, an administrator is a personal representative not named in a will”.

Oxford Advanced Learner’s Dictionary 6th Edition defines “*personal*” as:

“Your own; not belonging to or connected with anyone else; connected with individual people; done by a particular person rather than by somebody who is acting for them; made or done for a particular person rather than for a large group of people or people in general”.

Sections 82 & 83 of the **Law of succession Act**, sets out the powers and duties of a personal representative. Letters of administration can only be granted to persons (real) who have legal capacity to enter into an agreement. Letters of administration cannot be granted to a nominee on behalf of a body corporate. (see **Section 56 & 57** of the **Law of Succession Act**).

It is therefore clear that when a court issues letters of administration or grants a probate of written will, such letters or grants are issued personal to the person applying to administer the estate of the deceased. The person applying for letters of administration or grant of probate cannot on his part delegate the powers granted to him by the court to someone else to administer the estate (*in the case where the deceased died intestate*) or to execute the will (*in the case where the deceased left behind a written will*) on his behalf. This court is not persuaded by the argument advanced by counsel for the petitioner that this court can confirm letters of administration with written will annexed where it is evident to the court that the petitioner is not resident within the jurisdiction of this court and therefore has no capacity to personally administer the estate of the deceased.

The question this court asks itself is; If this court can issue and confirm letters of administration or grant of probate of written will to persons who permanently reside out of the jurisdiction of this court, how will such persons administer the estate of the deceased? It is clear that the **Law of Succession Act** envisages that letters of administration or grant of probate can only be issued to persons who are within the jurisdiction of this court and who will be held accountable by the court in regard to the administration of the estate of the deceased. It is not by coincidence or sheer chance that the persons who are allowed by the court to administer the estate of a deceased are referred to as “*personal representatives*”. Their representation of a deceased is personal to them and cannot be delegated to someone else, and in this case, even to their own advocates.

It is evident from the foregoing that the arguments made by counsel for the petitioner finds no favour with this court. The petitioner must be personally present in this court to confirm that he is indeed within the jurisdiction of this court to enable the grant of letters of administration with written will annexed to be confirmed. It is so ordered.

DATED AT NAIROBI THIS 16TH DAY OF FEBRUARY, 2011

L. KIMARU
JUDGE