



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**SUCCESSION CAUSE NO 635 OF 2009**

IN THE MATTER OF ESTATE OF NEWTON MUNGAI ( DECEASED)

MARION NJERI .....PETITIONER/APPLICANT

**VERSUS**

JOYCE MUTHONI MUNGAI.....RESPONDENT/OBJECTOR

**R U L I N G**

Newton Mungai Wachira (the deceased) died intestate on 4/10/09 . He left behind his mother, Joyce Muthoni Mungai, his widow Marion Njeri and two minor children. Grant was issued to both Joyce Muthoni and Marion Njeri on 12/5/2010

By a summons for confirmation of grant dated 24/11/2010, the widow, Marion Njeri sought to have the grant issued to her and her mother in law confirmed. The main asset of the estate comprises cash in equity Bank. Before the grant came up for confirmation, Joyce Muthoni filed a replying affidavit on 4/1/2011 objecting to the confirmation. Her only objection is that at the time of his death, the deceased owed Ksh100,000/= for purposes of boosting the deceased's business. The objector annexed an agreement purportedly entered into between the deceased and one Lucas Njau, the lender.

The counsel for the parties filed submissions. Mr Kahiga, counsel for the applicant, submitted that the objector had not demonstrated that she is a beneficiary of the estate to deserve any part of the estate . It was also argued that the alleged debt of Ksh 100,000/= is not genuine because Lucas Njau has not come to court to claim it and there is no evidence that the deceased acknowledged receipt of the money; that it is the objector who prepared the P& A 5, she did not disclose any liability to the estate of the deceased and that it is an afterthought and a genuine claim but a ploy by the Respondent to get money. As respects the allegation that the summons for confirmation was made prematurely, counsel urged that any person can apply for confirmation of grant so long as all concerned are notified and that the petitioner wants the only asset of the estate to be released to her to hold in trust for the benefit of the children of the deceased.

In reply, Mr Ayuka, counsel for the respondent/objector argued that what the respondent filed is an objection to the exclusion of the respondent from the application for confirmation.

There is no doubt that the two, Marion Njeru and Joyce Muthoni are the administrators of the deceased's estate. The summons for confirmation is made by only Marion. Being two

administrators, it would be expected that both apply for confirmation of the grant. This is not the case here. Marion Njeri did not disclose why she moved the court for confirmation to the exclusion of the respondent. The deceased's children are aged 2 and 3 years. The law requires that there be two administrators of the estate of a deceased person in such a case, to ensure the interests of the minors is protected. I note that in the application, the applicant prays that the grant be confirmed in the name of both the applicant and respondent. It therefore means that the respondent was not excluded from the application. The grant could only be confirmed with the respondent's consent.

It is the respondent who first moved this court for letters of administration. The applicant was enjoined as an administrator later on. In form P & A 5, the respondent was supposed to list the assets and liabilities of the deceased, but no liability was indicated. The only asset indicated was the cash in Equity Bank. The question is why did the respondent not include the said debt in the liabilities of the deceased,? why does the liability arise so late in the day? No explanation has been given by the respondent why the debt has been brought up at this stage when the petitioner wants the grant confirmed. The loan agreement is a contract and its validity would need to be proved. It is only Lucas Njau who can do so.

Secondly, why has Lucas Njau who allegedly lent money to the deceased not come into these proceedings. The said Njau has not even sworn an affidavit. Does he exist? The respondent has no business playing advocate for the said Lucas Njau. I believe that is what the court held in **Njeru Ngunjuranuo vr Njue Ngunjurano CA53/02** when the court said  
**..... There were other beneficiaries to this estates whose presence was not noted at the time of confirmation of the grant. None of these persons have however raised any objection to the confirmation of the grant. The appellant cannot therefore be heard to complain for them"**

I totally agree with the above finding. Since Njau had not complained, the respondent has no business complaining on his behalf.

I also agree with Mr Kahiga, the petitioner's counsel that if the respondent wanted to object to the confirmation, she should have filed an affidavit of protest pursuant to Rule 40 (6) and the protest should be in form 10. Under Rule 41 (1), the court can hear any interested person at the hearing of the application for confirmation.

The petitioner has 2 minor children. The only assets of the estate is the cash in Equity Bank. The respondent says that she does not need any of it. The petitioner needs the money for the upkeep and maintenance of the children and there is no reason why the grant can not be confirmed. Since the beneficiaries are minors it is ordered that the funds held in Equity Bank be held jointly by the petitioner and respondent for the benefit of the petitioner Marion Njeri and in trust for the deceased's children whose portion should be invested. The grant is hereby confirmed in these terms. Each party bears to its own costs.

It is so ordered.

**DATED AND DELIVERED THIS 24<sup>TH</sup> DAY OF JUNE 2011**

**R.P.V. WENDOH  
JUDGE**

**Present**

Mr Kadima holding brief for Kahiga for applicant  
Mr Simiyu holding brief for Kerongo for respondent  
CC: Kennedy Oguma