



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**SUCCESSION CAUSE NO. 559 OF 2007**

**IN THE MATTER OF THE ESTATE OF AZIZ HABIB KASSAM (DECEASED)**

**RULING**

In his summons dated 20<sup>th</sup> July 2007 John Mwati (the Objector) seeks the revocation of the Grant of Probate in this cause on the ground that the same was obtained by concealment of a material fact. The material fact he claims the Executors concealed is their failure to disclose to court that he was a dependant of the deceased. The second ground is that the deceased had also not provided in his will for his (deceased's) own mother and other relatives. He claims that prior to his death, the deceased had invited him to live in his house and treated him as his own son as he provided everything for him. He further claims that the deceased even used to allow him collect rent of Kshs.30,000/= for part of his premises.

Besides his two affidavits, the objector got one Philip Onsombi and one Benson Gikonyo Ichai to swear affidavits in support of his application. Onsondi claimed that the deceased had employed him as a watchman of his shop on Latema Road and that when he occasionally visited him at his residence he noticed that the deceased and the objector were great friends and that it was the objector who was taking care of the deceased when he was ailing. He further claimed that though the objector was living with the deceased he was not his employee.

On his part Mr. Ichai claimed in his affidavit that, from his own personal knowledge, the deceased treated the objector as his own son. He based his claim for that on the allegation that the deceased allowed the objector to let part of his (deceased's) premises to him and that he used to pay the rent to the objector. He also claimed that the objector used to work in the deceased's office.

Basing themselves on these averments in their submissions counsel for the objector urged me to find that the application is merited and allow it. The Executors of the deceased's will strongly oppose the objector's application. In his replying affidavit, Zubeda Nanji, one of the Executors dismissed the objector's application as malicious. He said the objector was employed as the deceased's driver. In the last few months prior to his death, the deceased allowed the objector to live in his house so that he would drive him to hospital when need arose.

Nanji further deposed that the deceased died, the objector refused to vacate and had to be forcibly ejected. It is that act of forcible ejection that has made him to be spiteful and caused him to maliciously bring this application to frustrate the administration of the deceased's estate. In his further affidavit he said Philip Onsombi's affidavit in support of the objector's application is also grounded on malice. He said because Onsombi used to report on duty while drunk, they complained to his employer, M/s Lake Security Guards Ltd. and he was barred from guarding their building. He added that Onsombi never visited the deceased at home. He also dismissed Benson Gikonyo Ichai's affidavit as false asserting that the objector had never had any premises in the deceased's building that he could let to him. He concluded that from information received from their employees, the objector has unsuccessfully tried to cajole them to swear false affidavits in support of his application and the court should dismiss therefore this application with costs.

I have considered the matter. The objector is not in any way related to the deceased. He has not said how

as a young boy the deceased, 35 years prior to his death, took him in as his son.

The deceased's children whom the objector claims are also not provided for in his Will have sworn an affidavit that they fully support the Will. From the affidavits of Winnie Mwendu Munoh and John Hamisi, some of the employees of the deceased who deposed that the objector unsuccessfully tried to persuade them to swear false affidavits in support of his application, I am satisfied that the objector's claim is false and has no basis.

In his affidavit sworn on 31<sup>st</sup> July 2009 in support of his application to have the deceased's Executors compelled to allow him take out his stock from the deceased's premises, the objector averred that he used to carry on the business of selling motor vehicle spare parts on the deceased's premises. How could such a person with stock worthy over Kshs.500,000/= be a dependant?

I agree with counsel for the Executors and find that the objector's application for revocation has absolutely no basis and I accordingly dismiss it with costs.

**DATED and delivered this 24<sup>th</sup> day of October 2011.**

**D.K. MARAGA  
JUDGE**