



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MOMBASA**

**Succession Cause 130 of 2009**

**B S M ..... 1<sup>ST</sup> PETITIONER/RESPONDENT**

**A K M.....2<sup>ND</sup> PETITIONER/RESPONDENT**

**P K M.....3<sup>RD</sup> PETITIONER/RESPONDENT**

**AND**

**J.L.K.....APPLICANT**

\*\*\*\*\*

**RULING**

Before me is the Chamber Summons dated 9<sup>th</sup> September 2009 filed by the Applicant **J.L.K** seeking various orders as are listed on the face of the application. The application was opposed by way of the replying affidavit dated 22<sup>nd</sup> September 2009 sworn by **AMOS KILUNGYA MUTISO** for and on behalf of himself and **BEATRICE SILU MUTISO**, the 1<sup>st</sup> Respondent.

This succession cause concerns the estate of one **G.M.M** (now deceased) who passed away at Mater Hospital on 27<sup>th</sup> December 2008. It is not in dispute that the 1<sup>st</sup> Respondent was a wife to the deceased the two having married on 1<sup>st</sup> January 1977 at Kasikeu Catholic Church under the provisions of the African Christian Marriage and Divorce Act. The Applicant claims to have had a relationship with the deceased which bore one minor child named **K.M.M**. The Applicant claims to be the second wife of the deceased which contention is strenuously disputed by the Respondent.

Following the death of the deceased 1st Respondent applied for and obtained a limited Grant in **High Court Succession Cause No. 84 of 2009**. This limited grant only relates to certain of the deceased properties. There exists yet another cause filed with respect to the same estate which is **High Court Succession Cause No. 130 of 2009** which is the petition for a full grant and which is still pending. The Applicant is aggrieved by the limited grant awarded to the Respondents as she claims that it does not recognize her status as the deceased second wife and further ignores her own rights and that of her minor child.

The estate of the deceased does appear to be quite substantial and in my view in such a case where there is clearly a dispute as to who the beneficiaries and/or the dependants of the deceased are, it is desirable that all issues pertaining to this estate be resolved expeditiously so as firstly to avoid any wastage of the said estate and secondly so as to ensure equity in distribution and thirdly in such a way as to give legal recognition to the rights of each beneficiary/dependant.

In the Chamber Summons dated 9<sup>th</sup> September 2009 the Applicant has made several prayers seeking various orders from this court. Prayer (b) seeks an order appointing the Applicant herein as co-administrator of the estate of the deceased together with the 1<sup>st</sup> and 2<sup>nd</sup> Respondent. Prayer (c) seeks an order to restrain the Respondents from taking possession of, disposing of and/or intermeddling with any of the properties of the deceased. Prayer (d) seeks orders that the motor-vehicle KAT 808Q be released to the Applicant forthwith. In my view prayers (b), (c) and (d) are at this stage pre-mature. What the Respondents hold at the moment is a mere limited grant. The application for full grant though having been made vide **High Court Succession Cause 130 of 2008** has not been heard and determined. The

prayers sought in (b) to (d) in my view may only be made once a court has reached a decision that the Applicant is actually a **'wife'** of the deceased under the terms of S. 29 of the Law of Succession and is therefore qualified to be a beneficiary to his estate. No such finding has as yet been made. I do not propose to interrogate that issue under this application as it is my view that such a decision may only be reached upon hearing evidence under the application for a full grant. For that reason I decline to grant prayers (b) (c) and (d).

Under prayer (a) the Applicant seeks the consolidation of the two succession causes 84 and 130 of 2008 and also seeks a limit on the validity of the limited letters of administration issued to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. With respect to the first part of this prayer and as I have stated earlier both succession causes 84 and 130 of 2008 refer to the estate of the same deceased person namely Gabriel Maanda Mutiso. In order to avoid a multiplicity of causes and in order to avoid confusion of issues I do agree that the interests of justice would be best served by consolidating the two causes. I see no risk of prejudice to any party by taking this course of action. To that end I do hereby direct that the two succession causes 84 and 130 of 2008 be consolidated and heard as one. The controlling file from henceforth will be **High Court Succession Cause No. 130 of 2008.**

As regards the second part of prayer (a), the position at the moment is that the Respondents hold a limited Grant with respect to the estate of the deceased. This grant is limited only to certain acts i.e. collection of rents. A limited grant is ordinarily granted only for a specified purpose and would lapse once that purpose has been achieved. A limited grant cannot and ought not be a substitute for a full grant.

I note that the Respondents have applied to be granted letters of administration with respect to the estate of the deceased. On 29<sup>th</sup> April 2009 the Applicant filed a caveat to that application vide S. 15 part IV of the Probate and Administration Rules. The purpose of a caveat is merely to enable the objector to receive notice of any applications made in the succession cause. It does not, as counsel for the Respondents have suggested, prevent the Respondents from proceeding to pursue their application for grant. It is manifestly clear that this estate is contested. As such it is desirable that the matter be determined expeditiously. To that end I do hereby direct the Applicant to file and serve her objection in accordance with S. 68(1) Law of Succession. Such objection to be filed in High Court Succession Cause 130 of 2009 and to be filed and served within fifteen (15) days of today's date. For avoidance of doubt my orders with respect to this present application are as follows:-

- (1) **High Court Succession Cause 84 and 130 of 2009 are hereby consolidated and will be heard as one. The controlling file will be High Court Succession Cause No. 130 of 2009.**
- (2) **The Applicant to file and serve her objection pursuant to S. 68(1) Cap 160 within fifteen (15) days of today's date.**
- (3) **Further mention on 5<sup>th</sup> March 2010 to ensure compliance and to allocate dates for hearing of that objection.**
- (4) **In the interim the status quo to be maintained.**

**Dated and Delivered in Mombasa this 17<sup>th</sup> day of February 2010.**

**M. ODERO**  
**JUDGE**

Read in open court in the presence of:  
Mr. Munyithya for Petitioner  
Mr. Onyango for Objector

**M. ODERO**  
**JUDGE**  
**17/2/2010**