



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
SUCCESSION CAUSE 31 OF 2006**

**IN THE MATTER OF: THE ESTATE OF NICOLA POLCINO (DECEASED)
COSIMO POLCINO (suing thro' his Attorney)
GIOVANNI DE CAROAPPLICANT
VERSUS
ANNA WAUSI POLCINORESPONDENT**

RULING

This is an application under the provisions of Section 76 of the Law of Succession Act, rules 44 and 63 of the Probate and Administration Rules by a son of the deceased, the late Nicola Polcino. The application inter alia seeks the following the orders.

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3. That this Honourable Court be pleased to stay the grant issued and confirmed herein pending hearing and determination of the Criminal Case No. 413 of 2010 at Chief Magistrate's Court at Malindi REPUBLIC –V- ANNA WAUSI MUTISO where the Respondent was charged with 3 counts of forgery in respect of the marriage certificate which the respondent used herein to obtain the Grant of Letters of Administration herein.

4. _____

5. That this Honourable Court be placed to review and or set aside the ruling of this Honourable Court delivered on 23.07.2009 dismissing the Applicant's application for annulment of the grant.

6. That after reviewing and setting aside the ruling delivered on 23.07.2009 this Honourable court be pleased to allow the annulment of the grant issued herein.

The Respondent was duly served with this application through her counsel on record. She filed a Notice to act in person but did not attend court or file any reply or submissions.

I have carefully considered the application, the affidavit in support and the written submissions.

The letter of Grant of Administration were granted to the Respondent. An application to annul it was dismissed by the Hon. Justice Sergon on 23.07.2009. The application for review is substantially based on the fact that the Respondent has now been charged with 3 counts of forgery of the marriage certificate, the basis upon which the court granted her the Letters of Administration. I think that it is premature to make any findings and decision in respect of the Marriage Certificate until the Criminal case is heard and determined. It is premature. The Respondent is innocent until proven guilty regarding the said marriage certificate. However, I do find that on a balance of probability that there are good reasons to stop the use and the application of the Grant pending the determination of the Criminal case as there is a danger of wastage and disposal of the assets of the Estate. The Applicant as a biological son of the deceased is a beneficiary to the Estate of his father and it is clear that he has been totally excluded by the Respondent who claims to be a wife and his stepmother on the bass of the said marriage certificate.

It is just to preserve this Estate in the circumstances, I do hereby grant prayer 3 of the Application and suspend use and application of the Grant issued herein. The Original Grant be deposited into this court within the next 14 days unless it is already in the Criminal Case in Malindi. The Respondent shall cease acting as the Administrator of the Estate until further orders of this court. Prayers 3, 4, 5 and 6 shall be considered and determined after the conclusion of the Criminal Case in

Malindi. Costs to the applicant.

Dated and delivered at Mombasa this 5th day of July 2010.

M. K. IBRAHIM
J U D G E

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5/7/10

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Coram:

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Ibrahim, J
Court clerk – Weyama
Mr. De Caro is present
Mr. Cosimo is present
No appearance for the Respondent
Ruling delivered in their presence.

Ibrahim, J