



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

Probate & Administration 64 of 1997

**MONICA WANJIRU MUKORA ::::::::::::::: DECEASED.
VERSUS**

PETER NDUNGU MUNDERU ::::::::::::::: PETITIONER.

RULING.

By a petition dated 12th September, 2007 and filed in court on 17th September, 2007, the petitioner petitioned for the grant of letters of administration *De bonis Non* over the estate of Monica Wanjiru Mukora who died domiciled in Kenya on 13th January, 1994 limited to taking over the grant issued to Peter Ndungu Munderu on 13th August, 1996 and confirmed on 12th August, 1996 for the purposes of completing the administration of the said estate.

The application is based on the grounds:

- (i) That Peter Ndungu Munderu died on 18th May, 2006.
- (ii) That at the time of his death, Peter Ndungu Munderu hand not completed the administration of the estate.
- (iii) That she presented the petition in her capacity as a niece to the deceased.

The application is predicated upon the annexed affidavit of Janet Wanjiku Kariuki sworn on the 12th September, 2007.

On behalf of the applicant it was urged that the grant of letters of administration over the estate of the late Monica Wanjiru Mukora was issued to Peter Ndungu Munderu on 13th August, 1996. The same was confirmed on 12th September, 1999 and the estate subsequently distributed to the beneficiaries. Although the beneficiaries of the said estate are in actual possession of the land distributed to them, yet the legal survey and the processing of individual titles is yet to be undertaken.

That Peter Ndungu Munderu died on 18th May, 2006 as evidenced by death certificate exhibited as "JWK 1". By the time of his death he had not completed the administration of the estate.

That Peter Ndungu Munderu was a cousin to the testator, Monica Wanjiru Mukora. That the applicant is a niece to the deceased. In her capacity as a niece, the beneficiaries of the subject estate is agreeable to having the applicant complete the administration of the said estate. As evidence thereof the applicant exhibited a consent marked "JWK 2".

At the hearing Mrs. Wanyama for the respondent raised preliminary points of law in the manner following;

- (i) The application is not dated,
- (ii) That the same is brought under the wrong provision of the law,
- (iii) It is brought under schedule 2, Rule 20 of the Probate and Administration Rules. That presupposes that the estate had a will which is not the case herein.

The respondents last and final position is that the applicant should have come under Rule 7C of the Probate and Administration Rules.

I have carefully analysed the rival arguments. To my mind Schedule 20 deals with a situation where the testator has left a will. There is a *lacuna* as regards a situation where the testator died intestate (no will). In such situations an applicant falls back to the inherent powers of the court. Mindful of the *lacuna* the applicant invoked the inherent powers of the court under Rule 73. Thus; in my view, the application is competent to that extent.

As for dating and signing of the application, it is true the application is not dated. I have looked at Schedule 20, Rule 20 of the Probate and Administration Rules. The form in that schedule is the one adopted by the applicants. It does not allow for the signing or dating of the applications. Moreover the affidavit in support of the application is evidence that it was sworn on 12th September, 2007. If the said schedule is anything to go by, then the signing of the application by the applicant does not render the affidavit defective.

For those reasons, the application, in my view, is competent. Accordingly, there shall be orders that the petitioner Janet Wanjiku kariuki be and is hereby granted letters of administration *De bonis Non* over the estate of Monica Wanjiru Mukora who died domiciled in Kenya on 13th day of January, 1994 limited to taking over the grant issued to Peter Ndungu Munderu on 13th August, 1996 and confirmed on the 12th day of August, 1996 for the purpose completing the administration of the said estate.

Dated and delivered at Kitale this 1st day of July, 2010.

N.R.O. OMBIJA.

JUDGE.

N/A for Petitioner.