

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
SUCCESSION CAUSE 27 OF 2002
IN THE MATTER OF THE ESTATE OF JOSEPH MWANGI KARANI – DECEASED
JUDGMENT

Joseph Mwangi Karani died on 22nd October 2001 intestate. Josephine Alisa Mwangi (*hereinafter referred to as the petitioner*) applied for the letters of administration describing herself as the widow of the deceased. According to the affidavit in support of the application, the deceased was survived by the petitioner and her five children at time aged between 2 years and 17 years. Letters of administration were issued to the petitioner on 15th August 2002.

On 4th March 2005, Kennedy Wanjohi Mwangi (*hereinafter referred to as the applicant*) applied for the revocation of the grant on the grounds that the petitioner concealed from the court the existence of the first house comprising of Jane Wambugi Mwangi the first wife, the applicant and his sister. The applicant also alleged that the petitioner concealed the properties belonging to the deceased and has been wasting the estate. Directions were given that this matter is to be determined by way of oral evidence to determine whether the applicant, his mother and sister are entitled to the deceased's estate as beneficiaries.

During the hearing of the application for revocation, the applicant gave evidence and produced a birth certificate which showed that he was born on 4th April 1982. The name of his father is indicated as Joseph Mwangi Karani, (deceased) while the name of his mother is Jane Wambugi Wachira. The applicant contends that the deceased was married to his mother Jane Wambugi Mwangi who is still alive. The deceased used to live with the applicant, his mother and sister in Keruguya. The petitioner failed to obtain the consent of the applicant before filing the petition for letters of administration. The applicant testified that his father had two wives namely the petitioner and his mother. The applicant contended that he was brought up by his father and they used to live together with the petitioner. As at the time of the deceased's death, he was not living with the applicant's mother. According to the applicant, the petitioner married the deceased in 1991; they used to live with the applicant in the same homestead. It is the deceased who used to take care of all the applicant's needs such as school fees. The applicant did not call any other evidence.

The petitioner gave evidence and produced a marriage certificate. She was married to the deceased under the African Christian Marriage and Divorce Act (Cap 151) on 1st June 1997 at a marriage ceremony solemnized at Rurii Faith Church Nyandarua. Before they formalized their marriage, the applicant testified that she had been married to the deceased in 1984 through the Kikuyu Customary Marriage. The deceased and the petitioner were blessed with five children. The petitioner produced the birth certificates of her children with the deceased in support of her case. The petitioner contended that the applicant was never introduced to her as the son of the deceased. The petitioner used to live with the deceased at the deceased's parents farm where they had constructed their matrimonial home. She however admitted that she used to see the applicant staying with the deceased's mother although he was never introduced to her as the stepson. The deceased never took in the applicant to stay with the petitioner.

During cross-examination, the petitioner stated that she thought the applicant belonged to the deceased's brothers or sisters. The applicant surfaced after the death of the deceased when they secretly wanted to

bury the deceased but the applicant intervened and objected, as a result, she was given the body of the deceased to bury. After the burial, the petitioner testified that she was subjected to systematic harassment by the applicant and the deceased's family. The petitioner was chased away from the matrimonial home and beaten with her children thus she had to seek refuge elsewhere. The petitioner said that she was not obliged to inform the applicant when she applied for the letters of administration.

From the evidence, it is clear that the petitioner proved that she was married to the deceased under the Statute Law. She and the deceased were blessed with five children. The status of the petitioner is also admitted by the applicant. The only issue in dispute is whether the applicant, his mother and sister are entitled to the deceased's estate. The mother of the applicant did not testify. If the mother of the applicant had a claim over the deceased's estate, she has not expressed it in this succession cause. She did not even file an affidavit to indicate her claim, so is the applicant's sister. Even the birth certificate produced by the applicant is not of much assistance because the owner of the certificate did not testify and did not file any affidavit. The only claim before this court is that by the applicant.

The applicant stated that he was living with the deceased prior to his death and he produced a birth certificate which shows the deceased was his father. The petitioner admitted that she used to see the applicant living with the deceased's parents for many years but because he was never introduced to her as the deceased's son, she thought that he was the son of the deceased's other siblings. Based on the evidence on record, it is more probable than not that the applicant is the son of the deceased. That is the reason why he was living with the deceased's parents and had the audacity to participate in the unfortunate events of trying to stop the petitioner from burying the deceased and also in harassing and intimidating her. Those ugly incidents clearly show the applicant had an interest in the deceased's estate because the deceased was his father.

I find that the applicant is one of the children of the deceased. However there is a lot of acrimony between the applicant and the petitioner such that the two cannot meaningfully administer the estate of the deceased. The petitioner being the lawful wedded wife of the deceased has a priority over the applicant. The grant of letters of administration made on 15th August 2002 to the petitioner and Joseph Wainaina Kamau shall remain. The petitioner shall apply for the confirmation and the deceased estate shall be distributed among the applicant and the petitioner's five children in equal shares. The petitioner should show the share of the applicant which will be transferred to him. This being a family matter each party shall bear their own costs of this litigation.

It is so ordered.

Judgment read and signed on 30th day of January 2009

M. KOOME

JUDGE