



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
SUCCESSION CAUSE 529 OF 2005
IN THE MATTER OF THE ESTATE OF M BIN M (DECEASED)

K N.....PLAINTIFF

VERESUS

M A

M....RESPONDENT

RULING

The applicant, K N, by her Summons in Chambers, seeks one primary order that the Grant of Representation Intestate issued to the Respondent on 27th July 2006 be annulled and/or revoked on the main grounds that another Grant of Representation had previously been issued to S U and B M in respect of the same estate in Succession Cause No. 33 of 1986; and that the Grant of Representation herein was obtained fraudulently by the making of a false statement and concealing of material facts from the court. The application is supported by an affidavit sworn by the applicant. In the affidavit the applicant deposes that the deceased was her father-in-law as she had married the deceased's son B M who is also deceased. It is further deposed that the said son together with his mother (the deceased's widow) had applied for and obtained a Grant of Representation to the deceased's estate in Mombasa High Court Succession Case No.33 of 1986. It is also deposed that both the son and widow of the deceased died and the applicant and her children are the only surviving dependants of the deceased. It is further deposed that the respondent is not a son of the deceased but only a neighbour and is not entitled to claim from the estate of the deceased at all.

The application is opposed and there is a replying affidavit sworn by the respondent. It is deposed in the affidavit that the respondent's father and the deceased M Bin M were brothers who shared a father but had different mothers and according to Islamic Law the respondent is a beneficiary of the deceased's estate as the closest relative. It is also deposed that the deceased had two wives before he died with whom he had no children but "acquired" (sic) a child named B M who also died without children. It is further deposed that, one of the deceased's widows, S U is alive and the respondent consulted her before applying for a Grant of Representation but she was not aware of the earlier succession cause. It is also deposed that the applicant entered the estate of the deceased on the pretext that she was married to B M but when B M died she married someone else and commenced selling portions of the only asset of the estate i.e. [particulars withheld]. The respondent denied that he is an imposter and contends that as the applicant is married elsewhere, and had no child with the deceased's adopted son, she is not entitled to

apply for a Grant of Representation.

When the application came up before me for hearing on 11th March 2009, counsel agreed to file written submissions which were in place by 6th May 2009. I have considered the application, the affidavits and the submissions of counsel. The facts of the dispute are in sharp controversy. There is no agreement on the names of the deceased. He is variously referred to as M M, M Bin M and M B. The cause of death given in the Certificates of Death is not the same. The age at which the deceased died is not agreed. The date of death is also not agreed.

The respondent in his application for a Grant of Representation described himself as the son of the deceased. When faced with this application, he changed that position and described himself as the deceased's nephew. The respondent acknowledges that S U was the deceased's widow who is still alive. Yet he did not mention her in his application for the Grant of Representation nor did he file a signed consent from her. On her part the applicant avers that the said S U is deceased and had, together with her son, applied for a Grant of Representation in High Court Succession Cause No. 33 of 1986 which is still pending finalization. The applicant does not acknowledge the Respondent as an heir to the estate of the deceased describing him as a mere neighbour. On his part, the respondent has exhibited three affidavits from his neighbours who have deposed that the Respondent is indeed the son of the deceased's brother and is not an imposter.

In those premises, the order that commends itself to me and which will serve the interests of all interested in the estate of the deceased is that the Grant of Representation issued herein should be revoked. The Respondent was not absolutely candid in his application for the same and his response to the applicant's application has clouded the dispute even further. To restore clarity to the administration of the deceased's estate, I will allow the applicant's application in terms of prayer three (3) thereof.

To avoid delay in the administration of the estate of the deceased, I order that the applicant files a cross-application for a Grant of Representation to the estate of the deceased to be considered along with the applicant's application herein when all issues in controversy will be considered. Thereafter parties will seek directions on how to proceed if they will not agree.

Costs of this application shall be in the cause.

Orders accordingly.

DATED AND DELIVERED AT MOMBASA THIS 28TH DAY OF MAY 2009.

F. AZANGALALA

JUDGE

Read in the presence of:-

Gekonde for the Respondent and Ananda holding brief for Muthama for the Applicant.

F. AZANGALALA

JUDGE

28TH MAY 2009