



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 1194 of 2009

IN THE MATTER OF THE ESTATE OF REUBEN KIPLAGAT CHESIRE – (DECEASED)

KIPTOO CHESIRE

CONNIE JEROTICH CHESIRE ASIYO

WILLIAM KIBIWOTT CHESIRE.....CITORS/APPLICANT

ALICE JEPCHUMBA CHESIRE..... CITEE/RESPONDENT

RULING

On 12th August, 2009, a Chamber Summons dated 5/8/2009 was filed by M/s Oraro & Company advocates for the petitioners. It was brought under section 45 of the Law of Succession Act (**Cap. 160**), as well as Rules 49 and 73 of the Probate and Administration Rules. It is an application seeking several orders for one Alice Jepchumba Chesire to account in relation to certain assets said to belong to the estate, and also for orders against intermeddling – relating to the estate of the late **REUBEN KIPLAGAT CHESIRE**

The applicants appear to have petitioned for letters of administration, which have as yet not been granted.

Following the filing of the application, M/s Maanzo & Company advocates on behalf of **ALICE JEPCHUMBA CHESIRE** filed a notice of preliminary objection dated 17th August, 2009. The objection is as follows-

“THAT the Applicants have no locus standi to bring the application and hence it should not be allowed.”

This objection was argued before me by counsel who appeared for the parties. It was contended by the Objector that only an administrator can bring such an application. For the applicants, it was contended that section 45 of the Law of Succession Act, and the Probate and Administration rules, can bring such an application. Several authorities were cited on both sides.

It is not in dispute that the applicants are children of the deceased. It is also not in dispute that they have applied for letter of administration, but have not been issued with the same. In the meantime, they have filed the present application for the respondent to account to the court on assets of the deceased, and to be restrained from disposing of assets.

I have considered the documents filed, submissions on both sides and the authorities cited. This application was brought under section 45 of the Law of Succession Act, and rules 49 and 73 of the Probate and Administration Rules. Section 45 provides-

“45 (1) Except so far as expressly authorized by this Act or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession of dispose of or otherwise intermeddle with, any free

property of a deceased person.

(2) Any person who contravenes the provisions

of this section shall-

(a) Be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and

(b) be answerable to the rightful executor or administrator to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”

The above section creates criminal liability for taking possession, disposal or intermeddling with any free assets of a deceased person in contravention of the law, or the terms of a grant of presentation issued by the court. It also makes the culprit answerable to the rightful executors or administrators.

Rule 49 of the Probate and Administration rules provides-

“49. A person desiring to make an application to the court relating to the estate of a deceased person for which no provision is made elsewhere in these Rules shall file a summons supported if necessary by affidavit.”

This rule appears to be an omnibus provision for making applications in situations which are not specifically covered under the Act or the Rules.

The objection by the respondent is that the applicants have no locus standi to file the application regarding assets of the estate as they are not administrators. In my view, the rule 49 allows all people who can demonstrate a sufficient interest in the subject matter, not just administrators or executors to apply to court. The merits or demerits of the application are a different story, and that will be determined by the court after hearing the parties. In my view, the applicants have a sufficient interest as children of the deceased or presumed beneficiaries to bring application. They need not be executors or administrators to bring the application. They have no locus standi. I dismiss the preliminary objection and order that the Chamber Summons dated 5th August, 2009 will be heard and determined on merits.

Dated and delivered at Nairobi this 29th day of October, 2009.

George Dulu

Judge.