



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Succession Cause 3103 of 2005

IN THE MATTER OF THE ESTATE OF PETER MUCHIRI NJUGUNA
alias MUCHIRI NJUGUNA alias KAHWAI NJUGUNA (DECEASED)

RULING

This is an application by JOYCE MUTHONI KAWHAI ('Joyce'), who seeks an order to revoke and annul a Grant of the Letters of Administration of the Estate of the late PETER MUCHIRI NJUGUNA, who died intestate and which Grant was issued to NAOMI WANJIKU NJUGUNA ('Naomi') in the Chief Magistrate's court at Thika on 19/1/2005.

Joyce bases her application on the grounds that Naomi did not notify her of her intentions to petition for the Grant, and further that Naomi had filed a fraudulent consent in support of her petition.

Evidence on record reveals that Naomi was the deceased's sister.

The legal position that pertains to priority of parties in matters of succession in intestate estates is well laid down in section 66 the Law of Succession Act (the Act), which stipulates that:

'When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference –

- (a) surviving spouse or spouses, with or without association of other beneficiaries;*
- (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;*
- (c) the Public Trustee; and*
- (d) creditors;*

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will'.

The fact that Joyce was the wife of the deceased is not denied, nor is the fact that between them, Joyce and the deceased had seven children. Given this admission and in view of the fact that Naomi was all

along aware of the existence of Joyce and her children, there can be no doubt that between the two, Joyce had a priority to petition the court with a view to administering her late husband's estate, unless of course she waived her rights as provided for under rule 26 of the Probate Rules which provides that:

'(1) Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.

(2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 of 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.

(3) Unless the court otherwise directs for reasons to be recorded, administration shall be granted to a living person in his own right in preference to the personal representative of a deceased person who would, if living, have been entitled in the same degree, and to a person not under disability in preference to an infant entitled in the same degree.'

There is no evidence that Naomi acted in compliance with the above provision, yet she made the trial Magistrate believe when she filed a 'consent' allegedly signed by Joyce and her children, which consent has been disputed by Joyce who claims that it is a fraudulent document.

I have perused the said consent document and I would tend to agree with Mr. Kinuthia that the same bears identity numbers which are clearly different from those of the alleged signatories, each of whom has annexed a copy of his/her identity card to the supporting affidavit. In my humble opinion, that consent was fraudulent and I am sure that had that fact been brought to the attention of the learned trial magistrate, she would have arrived at a very different conclusion.

In view of the above, I find that Naomi obtained the Grant fraudulently, and I do hereby grant Joyce the orders which she seeks, by declaring it a nullity and thereby revoking the said Grant. She shall also have the cost of this application.

Dated and delivered at Nairobi this 18th day of June 2008.

JEANNE GACHECHE

Judge

Delivered in the presence of: