



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**Succession Cause 2508 of 1999**

**IN THE MATTER OF THE ESTATE OF SAMUEL MBURU NJOROGE (DECEASED)**

**RULING**

The summons before me is brought under Rules 49, 63 and 67 of the P&A rules of the Law of Succession by JOYCE WANJIRU NJOROGE dated 14/4/2005 who has sought principally for one order as follows:-

That the Applicant herein be given leave to apply for provision as a dependant after confirmation of the grant

This application is premised on the grounds stipulated in the body of the application and more so as expounded in the supporting affidavit of the Applicant and that of Reuben Mukuha Njoroge. According to the Applicant, she is the daughter of the late Samuel Mburu Njoroge (deceased) who died on the 20<sup>th</sup> December, 1999 testate.

The Grant of Probate of Written Will was issued on 20<sup>th</sup> December, 1999 to the named executors who are now named as the Respondents. The Grant of Probate was confirmed on 3<sup>rd</sup> November, 2000 and on 10<sup>th</sup> November, 2000, the Respondent invited the Applicant to a meeting in her Advocate's office where the will was read.

The Applicant now seeks for leave of the court to apply for reasonable dependency as the grant was confirmed and the Law requires that any application for dependency be made before the confirmation. This application was opposed by the Executors, Counsel for the Executors raised a Preliminary Objection on a point of law that torches on the merit of this application as follows: -

Firstly, Counsel argued that the application is incompetent and bad in law for being time barred. Section 30 of the law of Succession clearly provides that no application under part III of the Act can be brought after the grant of letters of Administration of representation has been confirmed. The present application was filed after over 5 years after the grant was confirmed on 3<sup>rd</sup> November, 2000.

Secondly, there is no power donated by the Act to enable the court grant the extension of the time and thus the application should be dismissed. On the part of the Applicant, Counsel for the Applicant urged this court to consider the inherent jurisdiction vested in this court that empowers this court to make any order in the interest of justice. I have carefully considered this application as well as the submissions made by the parties either in opposition or in support.

The Provisions of Cap 160, direct that applications for dependency be made according to section 26 of the Law of Succession. And Section 30 of the Act provides: -

**“No application under this part shall be brought after a grant of representation in respect of the estate to which the application referred to has been confirmed as provided by Section 71”**

In this regard, the Applicant ought to have filed her application before the grant was confirmed.

I have also taken into consideration the submission that the applicant was not informed about the grant until 10/11/2000 when she was summoned at the offices of the Respondent's Advocates. This is a clear indication that the Applicant was aware of the grant at least a few days after the grant was confirmed and if she was not satisfied with the proceedings leading to the issuance of the grant, that was the time to

challenge the same. She has clearly deponed in her affidavit in support of this application in paragraph 7 as follows:-

**“I attended the reading of the will and the contents of the same were shocking as I was only given thirty thousand shillings while I was aware that the deceased had an extensive estate. I took the money and hoped that my stepmother Leah Mburu who was left behind with the bulk of the estate would find it prudent to share some of the property. I annex hereto a copy of the said will marked exhibit 2”**

From the above averment, it is clear that the applicant was aware of the will, she took possession of her bequest according to the will and now almost 5 years she seeks for leave to file an application for reasonable provision. I am not satisfied that apart from the provisions of the law, even based on the Applicants facts, I can excise my discretion in her favour. The law is clear that an application for dependency can only be made before confirmation and even if I were to excise my discretion to extend the time, the Applicant has not demonstrated that she so deserves the same.

Accordingly, I dismiss the application and this being a family matter, I order no costs.

It is so ordered.

Ruling read and signed on 20<sup>th</sup> January, 2006.

**MARTHA. KOOME**

**JUDGE.**