



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Succession Cause 372 of 2005

IN THE MATTER OF: THE ESTATE OF JOHN MKALA RINGOMA (DECEASED)

BETWEEN

**CAROLINE WATIRI MBAGARA also known as CAROLINE WATIRI MKALA
APPLICANT**

AND

SICILIA MESI ERNEST 1ST RESPONDENT

LEVINA WALEGWA RINGOMA 2ND RESPONDENT

RULING

On the 7th day of November 2006, this court granted letters of administration intestate in respect of the estate of John Mkala alias Ringoma deceased to Sicilia Mesi Ernest and Levina Walegwa Ringoma hereinafter referred to as the 1st and 2nd respondent. In a summons dated 7th February 2006, Caroline Watiri Mbagara also known as Caroline Watiri Mkala hereinafter referred to as the applicant applied for the aforesaid summons to be revoked. She filed an affidavit she swore on 27th February 2006 to buttress the summons for revocation.

When the summons came up for hearing, the respondents did not file any replying affidavit to oppose it. Directions were granted allowing the application to proceed for hearing on reliance of affidavit evidence.

The gist of the applicant's application is that she was married to John Mkala alias Ringoma (deceased) though the marriage was not formalized. She annexed to her affidavit copies of the N.H.I.F. card, funeral announcement notice and a letter from Telkom Kenya showing that she was named by the deceased as a spouse. She accused the respondents for secretly filing the petition for letters of administration without involving her. In the summons, the applicant has made the following allegations against the respondents:

- I. That they concealed the fact that the deceased had two wives.
- II. That the respondents fraudulently concealed to the court that the applicant was married yet they disclosed that the deceased was the father of Stacy Mesi Mkala.

Mr. Kibe Advocate for the respondents urged this court to dismiss the application because it lacked

merit. The learned advocate averred that the applicant's rights existed elsewhere but not through these proceedings.

I have considered the arguments advanced by the parties for and against the summons for revocation. It is not denied that the applicant was left out in the pleadings which gave rise to the grant issued to the respondents. It is the contention of the applicant that the respondents hid the fact that she was married to the deceased hence accordingly she should have been treated as a widow. She however admits that the relationship between the applicant and the deceased was not formalized.

In a nutshell, there was no evidence to show that there was a ceremony to establish the existence of a customary marriage between the deceased and the applicant. There is no evidence that the applicant has filed an application before a court of competent jurisdiction to declare their cohabitation to amount to a presumed marriage. There is also no evidence that the marriage was registered under any written law. The applicant has accused the respondents of concealing the fact that she was a widow. From her own averments it is clear that there is no formal or presumed marriage between the applicant and the deceased. I see no merit in her accusation against the respondents. The respondents were not bound to presume the existence of marriage.

The applicant has accused the respondents of secretly obtaining the grant of letters of administration. The basis of her argument is that she was not involved. In her entire affidavit, the applicant has not disclosed to this court as to how she came to know of the existence of the succession proceedings. There is evidence that the same were advertised through the Kenya gazette notice. I can only infer that the applicant may have learnt of the existence of the succession cause through the Kenya gazette notice. It is therefore clear that the respondents are not guilty of concealment.

In the end I see no merit in the application. What has emerged is that the applicant has some genuine claim over the estate of the late John Mkala alias Ringoma. In the absence of proof of a marriage or any other kindred relationship the applicant's claim must fail. I agree with the submissions of Mr. Kibe advocate that the applicant may lay a claim on account of dependency. This claim cannot obviously be lodged at this stage. If well advised, the applicant should take the necessary steps at the appropriate time to seek for the available remedies in law. Other wise the end result is that the summons for revocation of grant is dismissed with each party meeting his or her own costs.

Dated and delivered at Mombasa this 31st day of May 2006.

J.K. SERGON

JUDGE