



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 375 of 1983

IN THE MATTER OF THE ESTATE OF JOSEPH MBARIA KIAMBATI (DECEASED)

RULING

Before me is a summons dated 8th March, 2005 filed by Mbichi

Mboroki & Co. Advocates on behalf of Stephen Chiira Karanja, who is described as an interested party. The summons is purported to have been brought under section 81 of the Law of Succession Act (Cap 160) and Rule 49 of the Probate and Administration Rules, as well as Section 3A of the Civil Procedure Act (Cap 21). It seeks for two orders that –

1. this honourable court be pleased to appoint Jonathan Kiambati as the legal representative of Doris Wanjiru Chege and Richard Karanja Kiambati for purposes of this suit.
2. the costs of the application be in the cause.

The application has grounds on the face of the summons. The main ground is that the two administrators Doris Wanjiru Chege and Peter Richard Karanja had died, and that it was in the interests of justice that the court appoints one Jonathan Kiambati as the legal representative of the deceased and administrator for the purposes of this suit. The said Jonathan Kiambati is said to be a son of Doris Wanjiru Chege (deceased) and Peter Richard Karanja (deceased). The application is also supported by a supporting affidavit sworn on 8th March 2005 by the applicant Stephen Chiira Karanja. In the affidavit, the applicant deposes that he had filed an application for revocation or annulment of grant of letters of administration, but that he was unable to prosecute the said application in view of the demise of the two administrators. That was the reason why he found it necessary, to file this application.

The application is opposed and grounds of opposition dated 18th May, 2005 were filed by Akoto & Co advocates, on behalf of Jonathan Kiambati. In brief the grounds of opposition were that the application was not sustainable in law, disclosed no reasonable grounds, was an abuse of the court process and the applicant did not have locus standi to bring the application.

At the hearing of the application on 3/4/2006, Mr. Kithinji for

the applicant submitted that there was a pending summons for revocation of grant, which was yet to be heard and disposed of. That the respondent was a relative of the deceased. The applicant wanted the respondent to be appointed legal representative, so that the case can proceed further.

Mr. Akoto for the respondent opposed the application. He

sought to rely on the grounds of opposition filed. In his view, the appointment of Jonathan Kiambati, as requested, would not serve any purpose. The applicant had also not shown why he made an application for revocation of grant. The respondent was not the only son of the deceased administrator, and had not claimed anything from the administrators. He was also not a beneficiary of the estate. In any case, the other beneficiaries should have been served with the application, which was not done. He gave the names of the other beneficiaries as David, Chege, and Mercy Wanjiru.

I have considered the application and supporting affidavit, as well as the grounds of opposition. I have also considered the submissions of both counsel for the parties.

Indeed, there is on record, a summons for revocation or annulment of grant by the applicant dated 7th June 2000. It was filed on the same 7th June 2000. That summons is still pending and has not been heard and determined. In that application the applicant Stephen Chiira Karanja alleged that the grant and confirmation of letters of administration was obtained by fraud and concealment of material facts. The respondents were the administrators, who are now said to be deceased. The applicant Stephen Chiira Karanja claimed to be a son of a brother of the owner of the estate Joseph Mbaria Kiambati. He deposed in his affidavit in the summons for revocation that a parcel of land KAMERETHO 380 and T.92 which belonged to his father was fraudulently included in the estate of the deceased Joseph Mbaria Kiambati. My reference to the summons for revocation or annulment of grant are merely for acknowledgment of that application as filed and not to determine the merits of that application.

The application before me is for appointment of the respondent Jonathan Kiambati as a legal representative of the deceased administrators. Counsel for the respondent has submitted that the applicant had not shown what purpose the appointment will serve. According to the documents filed and the submissions of the applicant the purpose is clear. It is to enable somebody to be on record as the administrator, so that the application for revocation or annulment of grant can proceed to hearing. I do not agree with the counsel for the respondent that the applicant has not shown what purpose the appointment of the respondent will serve.

Counsel for the respondent has also submitted that the applicant had not shown why he filed the summons for annulment of grant. I cannot agree with him. The summons for revocation/annulment is very clear. It alleges fraud and false information leading to alleged inclusion of property that did not belong to the estate of the deceased.

Though the applicant refers in the summons for revocation to letters of administration confirmed on 14th March 1985, I have anxiously looked into the file for those confirmed letters of administration. I have not found a copy of same. No explanation has been given on their absence from the file. The applicant has not filed any copy of certificate in the application. Instead there is in the file, a copy of a certificate of confirmed grant of letters of administration to the estate of Leonard Kibunja Karatu in Succession Cause No. 376 of 1993, wherein the administrator is one FRASIAH NYAMBUTU KIBUNJA. This was not referred to in the application.

This court definitely has powers to make orders to meet the ends of justice in succession matters. This is the import of rule 49 of the rules which allows person who desire to make application to the court that are not provided for in the Rules, to file summons supported, if necessary by affidavit and also Section 47 of the law of Succession Act (Cap. 160) which provides –

“47. The High Court shall have jurisdiction to entertain and determine any dispute under this Act and to pronounce such orders therein as may be expedient.”

It is clear from the above that the court has wide discretion. However, the court cannot act in vain. It was upon the applicant to provide particulars in the application as to the appointment of Doris Wangui Chege and Richard Karanja Kiambati as administrators. He has failed to do so. That leaves the court to wonder whether or not indeed the two were appointed and confirmed as administrators. This court cannot speculate for an applicant. The court operates on the basis of evidence and the law. There being no evidence of the court order, sought to be ruled upon by this court, this court cannot grant the orders sought. I therefore have to strike out the application.

For the above reasons, I strike out the summons dated 8th March 2005. The applicant will bear the costs of Janathan Kiambati in the application.

It is so ordered.

Dated and delivered at Nairobi this 24th day of May 2006.

George Dulu,

Ag. Judge