

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 2784 of 2006

IN THE MATTER OF THE ESTATE OF PENINA STELLA MUTAMBA (DECEASED)

RULING

There is before me an application ascribed to one JOSEPH MUTAMBA styled Petition for Grant of Letters of Administration ad Colligenda Bona of the estate of PENINA STELLA MUTAMBA said to have died in the Republic of Kenya on 11.02.06. The grant is to be 'Limited for the purpose of collecting and getting in the same and until further presentation be granted.' The applicant JOSEPH MUTAMBA is stated to be the legal father of the deceased and next of kin.

There is an affidavit ascribed in the opening sentence to one JOSEPH MUTAMBA of Post Office Box No.14790 – 00100 'within the Republic of Kenya' purporting to support a 2006 petition whose date and month are not specified. The person stated at the end to have sworn the affidavit on 15.11.06 is, however, stated to be JAMES MUTAMBA, not JOSEPH MUTAMBA to whom the affidavit is ascribed at the beginning!

Other than the petition dated 15.11.05 and the affidavit dated 15.11.06 purporting to support a petition whose date is not specified in the supporting affidavit, the applicant has not provided documentary evidence of either his identity and nationality or of his relationship to the deceased said to have died in a motor accident in Nairobi, Kenya. It is stated in the affidavit alluded to above that the applicant is a citizen of Uganda whose presence locally is temporary and restricted to processing the compensation for the death of the deceased minor (Stella – whose age is given as 8 years at the time of her death) from the insurer 'as is evidenced by my temporary already visa annexed.' No visa, expired or otherwise, is annexed to the affidavit. Particulars of the insurance company were not given but upon my enquiry on 28.11.06, applicant's counsel named the company as KENYA ALLIANCE ASSURANCE CO. LTD.

When the application first came up for hearing before me under certificate of urgency on 16.11.06, the applicant was represented by learned counsel, Mr A.O. Obwayo, who informed the court that the applicant's Kenyan visa had expired. I asked for the date of expiry and applicant's counsel said he had no information as to the date of expiry of the applicant's visa. The applicant did not seem to be present and I asked applicant's counsel to present him before court on 23.11.06. On this latter date a different counsel, Mr T. Ochichi said he was holding brief for Mr Khahula for the applicant. Mr Ochichi told this court that the applicant has been in this country since June, 2006; that he (applicant) is Ugandan whose Passport expired on 19.09.06 but that the Kenyan authorities are aware of his presence in Kenya. Applicant's counsel added that the applicant had applied for registration as an alien on 19.06.06 but had not received any response. There is a photocopy application for alien registration acknowledgment in the court file. At the column for surnames is inserted the name WAPOA, not MUTAMBA. The applicant's Passport Number is not given. The column for registration officer is blank as is also the column for signature.

Applicant's counsel told the court that the applicant was in court; that he has no engagement locally except pursuing the issue of compensation for the death of the deceased who was his minor child. The court sought to know where the applicant was staying and applicant's counsel informed the court that the applicant was being hosted by a Kenyan friend, JOSEPH MUTETI. The court sought to know what the applicant's Kenyan friend did for a living and the friend, sitting in chambers, said he was a Jua kali businessman and gave his address as P.O. 1774, Nairobi, Telephone 0722939358. He gave his physical address as Jericho Market, Nairobi.

I have given due consideration to the petition for Letters of Administration ad Colligenda Bona.

The discrepancies and omissions highlighted above render the petition not only incompetent but also suspicious. I shall deal with the incompetence aspect of the petition shortly but shall leave the suspicious aspect of it to relevant Kenyan agencies for investigation and action as they may deem appropriate.

Having regard to the discrepancies and omissions in the petition and supporting documents highlighted above, I find the said petition incompetent and the same is hereby struck out.

I direct that copies of this Ruling be served on Kenya's Principal Immigration Officer and Director of Criminal Investigation for investigation and action as may be necessary.

Orders accordingly.

Delivered at Nairobi this 28th day of November, 2006.

B.P. KUBO

JUDGE