

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

MISC. CIV. APPLI. 296 OF 2003

IN THE MATTER OF THE ESTATE OF JOYCE WANGUI KABUGA (DECEASED)

HANNAH WACHUKA KABUGA..... APPLICANT

RULING

The applicant, Hannah Wachuka Kabuga applied for nullification of grant of letter of administration *ad colligenda bona* which was issued to James Kimani Kanyi, the respondent herein on the ground that the same was obtained fraudulently by making of false statements that the respondent was the lawful husband to the deceased, Joyce Wangui Kabuga. It was also alleged that the respondent concealed from the court that the applicant who is also the deceased's mother, was the guardian of the deceased's only child, Janet Wambui. The respondent was also accused of having made untrue allegations of facts in justifying the application for the said grant and also of uttering false documents in support thereof.

In her affidavit in support of the application, the applicant stated that the respondent had never married the deceased under any legal system of marriage as he had stated in his application for the limited grant. He had also never stayed with the deceased's minor child who actually was and is still living with the applicant, her grandmother who was also the deceased's mother.

The respondent was also accused by the applicant of having falsified some documents relating to the deceased for the sole purpose of obtaining letters of administration *ad colligenda bona* for the purpose of filing a suit, **HCCC No. 93 of 1993**, so as to seek compensation as a result of the death of the deceased in a road traffic accident. For example, he purported to have purchased a coffin on 16/2/98 for the burial of the deceased while in actual fact the deceased had been buried on 14/2/98.

The respondent, upon filing the aforesaid suit, had the same settled out of court and without any approval of the settlement by the court as required under the law, a sum of Kshs.393,500/- was paid to his advocates in January 2002 out of which he was paid Kshs.188,000/-. He personally spent the aforesaid sum of money rather than investing the same or a reasonable portion thereof for the benefit of the deceased's child. The respondent's advocate withheld the rest of the money although he deposited the same in court sometimes in April 2005 pursuant to this court's order. The respondent had also been ordered to deposit in court the portion that had been paid to him unlawfully but despite his several promises to do so, he refused, failed and/or neglected to comply with the court order and was consequently committed to civil jail for six months or for such other shorter period as it was going to take for the court order to be complied with.

The respondent had stated in his replying affidavit that he married the deceased in 1983 and they lived together until 6th February, 1998 when she died in a road traffic accident but that was denied by the deceased's mother. He however admitted that he had never paid any dowry for her and that the issue of dowry had arisen after her death and he promised to pay the same. He insisted that the deceased's child was his and had even been named after his mother.

Having carefully studied the affidavits that were filed by the parties and having heard submissions of both counsel, I have no doubt in my mind that the grant of letters of administration *ad colligenda bona* was obtained fraudulently by the respondent. The respondent did not adduce any evidence to show that he had contracted either statutory or customary marriage with the deceased and neither was there any proof that he was the father to the deceased's child. The child of the deceased had been staying with the applicant for years even before the demise of the deceased. That was not disclosed by the respondent in his application for a limited grant. He did not even mention the deceased's mother in his application. It

is obvious that the respondent's interest in applying for the limited grant was to get a way of filing a suit to seek compensation by way of general and special damages following the death of the deceased. This became evident by the manner in which Nakuru **HCCC No. 93 of 2000** was filed and settled and by the manner in which the settlement sum was appropriated. As earlier stated, this court had to intervene to safeguard the minor's interests when its attention was drawn to the illegalities that were perpetuated by the respondent and his advocate. I have no hesitation in nullifying the letters of administration **ad colligenda bona** that were issued to the respondent on 15th April, 1998.

With regard to the money that has been deposited in this court in purported settlement of the aforesaid **HCCC No. 93 of 2000**, I direct that the money be released by the court as it is not bearing any interest and the same be deposited in an interest earning account in the joint names of the Deputy Registrar, High court, Nakuru, and M/S Karigo Thuo & Company Advocates until letters of administration of the estate of Joyce Wangui Kabuga (deceased) are issued to the appropriate person. The aforesaid account holders will jointly agree on the bank that will hold the said funds. The above order will also apply to the sum of Kshs.188,000/- once it is deposited in court by the respondent. The respondent will bear the costs of this application.

DATED, SIGNED & DELIVERED at Nakuru this 28th day of June, 2005.

D. MUSINGA

JUDGE

28/6/2005