



REPUBLIC OF KENYA

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

**Succession Cause 2204 of 2004**

**IN THE MATTER OF THE ESTATE OF EFSTRATIOS MEIMARIDIS**

**PHAEDON also known as EFSTRATIONS BYRON MEIMARIDIS also known as**  
**EUSTRATIONS MEIMARIDIS (DECEASED)**

**RULING**

Nicola Sofia Dissette a minor, beneficiary of the Estate of the late Efstratios Byron Meimaridis also known as Eustratios Meimaridis applied through her Counsel Mr. Salah El Din Amin for the annulment of the Grant of Letters of Administration issued by the High Court on 23rd May 2005.

The application is premised on the grounds stipulated in the body of the Summons dated 23rd June 2005 and more specifically expounded in the Supporting Affidavit of the Applicant's Counsel.

The gist of the matters deposed to in the said affidavit can be summarized as follows:-

Firstly, a caveat was filed herein by Peter Walker Esq. An Advocate on behalf of the minor Applicant on 9th July 2004. No Notice or warning in the prescribed form was issued to the caveater when the Grant of Letters of Administration was applied for by the Petitioner.

Secondly, on 20th September 2004, the deceased widow Penelope Mcdougall applied for Letters of Administrations Ad Collageda Bona which was issued on 30th September 2004 in P & A Number 2839 of 2004.

Thirdly, the said widow together with Mr. Hamish Wooller Keith an Advocate in law firm of Dally & Figgis applied for the Grant of Letters of Administration under a different Cause No. 507 of 2005 wherein the Gazette Notice was published.

Fourthly, the Applicant who is a child born out of wedlock by the deceased was left out as a Beneficiary and due to the fact that the petition was published under the wrong Cause No. the Applicant could not file the requisite objection to the issuance of the Grant Letters of Representation. According to the Applicant, this prejudiced the Applicant and it is also in breach of the provisions of rule 7 (4) of the P & A Rules.

Lastly, the Applicants are also objecting to the appointment of a Co- Administrator Mr. H. W. Keith due to a potential conflict of interest. Counsel for the Applicant argued that the said Co-Administrator is a partner in the law firm of M/s Dally & Figgis who are acting for the widow and the said widow has already exhibited a hostile altitude towards the minor Applicant.

This application was opposed by the Petitioner.

According to Counsel for the Petitioners, due to an error or an inadvertent oversight the P & A Registry published the Petition for Grant under a Cause No. 507 of 2005 although the court had directed that the Petitioners do apply for the Grant of Letters of Administration under P & A 2204 of 2004.

However Counsel submitted that the files were all consolidated when the error was noticed and since they were all the time in communication with Counsel for the Applicant who was represented by Mr. Peter Walker no prejudice has been suffered by the Applicant.

In any event, Counsel for the Petitioner contended that the Applicants interest have been factored in, at first the paternity of the Applicant was in issue but after the D.N.A tests confirmed that the Applicant was sired by the deceased that issue has been settled and the Applicant is a Beneficiary of the estate of the deceased and that a share shall be determined when the Grant is confirmed and the same shall be held in Trust in accordance with the Law of Trusts.

As regards the appointment of Mr. H. W. Keith a Senior Partner in the Law firm of Daly Figgis this was done even in consultation with the former Advocate for the Applicant and indeed it was to secure the interest of the minor child as there is a continuing Trust. There is no material placed before the Court to support the allegation of bad faith or improper conduct and thus Counsel for the Petitioner submitted that the administration of the estate should proceed.

I have carefully considered this application and the material that was placed before me. I think the matters stated herein before clearly show the genesis of this dispute.

The Court record will show that on 19th July 2004, Mr. P. D. B Walker Esq. filed a caveat on behalf of Nicosetta Dissette of Malindi which was in P & A 2204/04. On 20th September 2004, the widow of the deceased petitioned for a limited Grant of Letters of Administration Ad Collinda Bona which was given a separate Cause Number.

On 11th December 2004 Counsel for the Widow sought for an order consolidating the two Causes under P & A 2204 of 2004 and P & A 2839 of 2004 wherein there is a caveat.

The Court ordered that the two files be consolidated and the Petitioners do apply for a fresh Grant under P & A 2204 of 2004. The Petitioner accordingly petitioned for a full Grant but the P & A Registry erroneously gave it another Cause No. 507/05 thus Counsel for the Petitioner appeared again on 10/5/05 for the consolidation of the files namely P & A 2839 of 2004, P & A 507/05 to be consolidated under P & A 2204 of 2004 and the said order was duly issued.

Apparently the Counsel for the Applicant then Mr. Peter Walker was fully aware of the consolidation on 10/5/05. The Gazette Notice was issued on 1st April, 2005 and hence my task is to establish whether this error that occurred whereby the Petition was published under a different Cause No. caused the Applicant any prejudice.

The essence of publication of the Notice of Petition is to inform any party who might be desirous of filing an objection to do so. The Applicant was aware of the petition as can be seen through correspondence exchanged between the Petitioners Counsel and the Applicant Counsel.

On 10/5/05 the files were consolidated so that even if the Applicant came to Court to lodge her objection under P & A Cause No. 507 of 2005, she would definitely have traced the correct P & A No. 2204 of 2004 whereby the files were consolidated.

I have not been satisfied that the Applicant has suffered any prejudice as a result of publication of the petition under the wrong Cause No. The other issue for consideration is whether the Grant should be annulled because there is an apparent conflict of interest in the appointment of H. W. Keith Advocate as a Co-administrator.

Apart from speculation that the Co-Administrator will not be objective in pertaining his duties as a Co-

Administrator, there was no material placed before the court to support the allegation.

I have considered the grounds for annulment and as pointed out earlier on, there was an issue of paternity that needed to be sorted out and since the Applicant has been accepted as a minor Beneficiary I am satisfied the deceased widow has the priority to apply for Letters of Administration. Thus even if the Grant is annulled the Petitioner has priority over the Applicant to be issued with Grant. The Applicant was a child born out of wedlock and if the Petitioners do not make adequate provisions for her, she has the liberty to apply under Part III of the Law of Succession or to file a Protest before the Grant is confirmed.

The role of the Administrator is also clearly spelt out in the law of Succession and in the event of Administrators, acting contrary to the law, the provisions for making them accountable are clearly spelt out in the law.

In conclusion, I find that the Applicant has not suffered any prejudice because even if she had filed an objection the deceased widow still had the priority and indeed her Counsel was kept in the know of when the various files were consolidated.

Accordingly, I disallow the application for annulment.

Costs be in the cause.

Ruling read and signed on 2/12/05.

**MARTHA KOOME**

**JUDGE**