



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
H.C. SUCCESSION CAUSE NO. 1197 OF 2001

IN THE MATTER OF THE ESTATE OF NOAH EARNEST

KAMAU WANGATI (DECEASED)

RULING

The applicant filed the Petition for a grant of letters of administration before Kiambu Resident Magistrate's Court. The Respondents filed the Cross-Petition but it appears that the applicant was issued with the grant on 13th October, 1997. However, the said grant was confirmed on an application by the Respondents wherein the three parties before me were given 1/3 share of the estate.

The applicant through her lawyer filed an application to review the said order of confirmation. As per the record of the Sub-ordinate Court the same is pending hearing and determination.

Be that as it may, the applicant has filed the present application dated 28th May 2001 seeking to annul the said grant. The application is made under section 76 (a) of the Laws of Succession Act and Rule 44 (1) of the Probate and Administration Rules.

The application is based on three grounds and at the out set I can state that the third ground is not available to the Applicant in law.

The second ground has been taken over by events as the three children named therein have filed an affidavit to state that they do not have any interest in the estate.

The only ground remains to be determined is that of jurisdiction of the Sub-ordinate Court to issue and confirm the grant of letters of administration of the estate in question.

In the petition before the Sub-ordinate Court itself, it is stated that the value of the estate exceeds Kshs.200,000/=. Under the provisions of Section 48 of the Laws of Succession Act the Resident Magistrate, Kiambu did not have jurisdiction to hear and determine the said Succession Cause.

It is trite law that where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing and that jurisdiction cannot be conferred by estoppel, consent, acquiescence or default. (Please see Court of appeal unreported cases of Wanjiku Muhia V/S Ng'ang'a Mutura C.A. (Nairobi) No. 142 of 2000 and Niazsons (K) Ltd V. China Road & Bridge Co-op C.A. (NRB) No. 187 of 1999).

The grant thus issued and confirmed by the Subordinate Court was a nullity and has to be annulled.

I am then urged to distribute the estate. But how can I distribute an estate without the grant in place. I can only indicate the process of the grant to be issued.

The contention of the Respondent, that the applicant is not the lawful wife of the deceased, cannot be

considered serious because in the application of confirmation by themselves they have given 1/3 share to her. That apart, no sufficient evidence is produced to prove that she was not the wife.

The Respondents have also conceded that the deceased sired a child with the applicant and that she came to him with a child of her own and they lived together. If so, that child of the applicant becomes a dependant of the deceased as per the Laws of Succession Act. In any event the applicants have averred that both the children are sired by the Deceased. Gloria Serah Mumbi who swore the affidavit to disclaim her interest along with her two sister has also sworn an affidavit on 2nd July 2001 and averred that the applicant was one of the three wives of the deceased who was her father.

The Respondents are the sons of another wife of the deceased. The children of third wife have waived their rights. They are Gloria Serah Njambi, Patricial Mumbi Kamau and Caroline Kamau. The Respondents' mother Jane Nunga Newbound was divorced in 1968.

Considering all the facts produced before me I am of an opinion that the Applicant, her two children and two respondents are surviving beneficiaries of the estate of the deceased and that the estate be divided equally between the applicant and her two children on one part and the Respondent on the other.

I can in the premises, further direct under provisions vested in me by Rule 73 of the Probate and Administration Rules, that a fresh grant be issued in the names of the applicant and the Respondents and that before the estate is distributed a fresh survey of the plot of land originally bearing L.R. No. Dagoretti/Thogoto 693 be made and produced before the court.

The original confirmed grant be surrendered to the registry of this court to be cancelled. There shall be mention of the matter on For further directions and/orders.

Dated and delivered at Nairobi this 29th day of May,

2002.

K. H. RAWAL

J U D G E.