



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

PROBATE AND ADMINISTRATION

CAUSE NO. 1767 OF 1994

IN THE MATTER OF ESTATE OF I B N (DECEASED)

J U D G E M E N T

E W B and N M, widow and son of the deceased respectively, petitioned this court for a Grant of Letters of Administration to the estate of the deceased, one I B N, who died on 18th January, 1994, in Nairobi, Kenya. The grant was duly issued, but the deceased's mother S M filed summons for revocation of the Grant issued to the 2.

S filed a lengthy affidavit in support of her summons for revocation or annulment, and sought to be included in the list of dependants. Paragraph 5 of her affidavit averred that,

“That my late son had all a long maintained me from the rent of the said property and on his death the tenant of his

property Umoja 1 Plot 108 continued remitting payment of rent of the said plot to me - - - -“

In court during the hearing, counsel for S M, the Objector submitted that the deceased used to maintain the Objector, S his mother. Annexed to S's affidavit was an agreement between the deceased and a tenant and the tenant considered the deceased's mother, as an agent. There were also rent books attached to Sarah's affidavit. The rent books were for the period 1993 to 1994, when the deceased was still alive.

The Objector claimed that she had not been sufficiently provided for.

Mrs. K for the petitioners submitted that this is the only in dispute in the estate. She submitted further that though the deceased and the 1st petitioner widow, were living apart as at the date the deceased died, he was nevertheless maintaining his wife from the proceeds of the rent of the property.

The petitioner denied that the deceased's mother S M, was maintained from the rents of the Umoja property.

That S simply rushed to collect rent from tenants upon the deceased's death, and did not even bother to pay City Council rates which accrued to Kshs.21,254/= and the petitioner widow had to pay the City Council. She annexed to her affidavit evidence of payment.

The widow also annexed to her affidavit evidence showing that the deceased's mother S M was paid cash Kshs.133,744/55 by the National Social Security Fund on the allegation that the deceased was not survived by anybody else.

That allegation or misinformation was also contained in the letter by the District Officer II Mathira (Nyeri) written to the Managing Trustee, NSSF.

I find that information to have been false because the deceased left behind four surviving children and a widow. The deceased's mother swore an affidavit on 29th day of January 1997. It was filed in court the same day. It is headed

“Reply to the Replyi ng affidavit”.

In paragraph 12 thereof she averred,

“That it is true that I did collect my son’s security benefits of the NSSF but I deny that I did so fraudulently.”

Again in para 6 of the same affidavit Sarah averred:-

“That indeed the said Respondent (deceased/widow) left my son in 1984 together with her children - - - -“

With the greatest respect to the deceased's mother Sarah even if the Respondent left the deceased for whatever reason and took the children with her, this does not entitle S to disinherit the deceased's children. The four children still remained the deceased's children entitled, to inherent from his estate.

Furthermore, unless the deceased's wife was divorced she too was still entitled to inherent from the deceased's estate and even if she was divorced, she could still come to court and file a claim as a dependant of the deceased being a former wife. See Section 26 of the Law of Succession Act, Cap 160, Laws of Kenya.

From the evidence I have considered above, I find no merit in the summons for Revocation filed by the deceased mother. I did not find any evidence to show that she was being maintained fully by the deceased. In any event, if her claim was to have a share of the deceased's estate, then she has already achieved this aim because she was paid the benefits of the deceased's from the National Security Social Fund. That was too big a portion of the estate to be paid to her when there is a widow and four surviving children!

That money was in my view obtained fraudulently by S M.

I move to dismiss with costs to the objector's, summons for Revocation filed by the deceased mother on 28th April, 1997. Dated at Nairobi this 16th day of May, 2002.

JOYCE ALUOCH

HIGH COURT JUDGE