



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 500 OF 2001
IN THE MATTER OF THE ESTATE OF
BENSON WACHIRA IRUNGU (DECEASED)

R U L I N G

The objector applicant, Naomi Namuleyi Seyle, petitioned the court for the revocation of the Grant of Letters of Administration issued to Catherine Nyawira Irungu on the 15th May, 2002, on the grounds that the proceedings to obtain the grant were defective in substance in that,

“at the time of the death of the deceased BENSON WACHIRA IRUNGU, I was legally married to him as a second wife since 1998 and we lived as husband and wife in the employer’s senior housing quarters at Webuye.....”.

Naomi alleged further that the petitioner obtained the grant by concealment of material facts. She prayed that the grant either be REVOKED, or she be included in the grant.

Naomi’s affidavit is dated 4th July, 2001. She avers that since the deceased’s death, both of them were paid Kshs.10,000/= each by the Panpaper Welfare, yet after that Catherine went behind her secretly and petitioned for Letters of Administration to the deceased’s estate.

The petitioner Catherine filed an affidavit on reply to summons for revocation. It is dated 26th July, 2001.

Catherine referred to the marriage between her and the deceased which marriage was under the African Christian and Divorce Act, Cap.151, Laws of Kenya. It was on 25th April, 1970.

Catherine averred that she lived and cohabited with the deceased in Mombasa as he worked with the East Africa Oil Refineries Mombasa, until 1973 when he moved to Webuye, upon joining the Pan African Paper Mills.

That he worked and lived there till 1973 when he died.

That Catherine moved to Nairobi in 1994, leaving her husband behind in Webuye.

Catherine denied having shared any of the deceased’s benefits with the objector whom she referred to possibly one of the deceased’s mistresses.

She attached her marriage certificate to the affidavit and letters either written by the deceased or to the deceased. Also attached was a newspaper cutting on the “Death and Funeral Announcement” of the deceased bearing the deceased’s photo. The cutting shows that the deceased was referred to as “husband” and Catherine Nyawira only. No other wife was mentioned.

Again, the newspaper cutting refers to Catherine's children as the deceased's children. It does not name any other children. Catherine referred to the separation cause which she filed in Eldoret court which was subsequently withdrawn during the deceased's life time. But Catherine complained about her husband's infidelity which caused him to get infected with HIV/AIDS, from which he died.

According to Catherine's affidavit further, her husband's personal items were handed over to her by the Pan Paper Mills administration in Webuye. This they did because they recognised her as the deceased's widow. Catherine's affidavit was not replied to by the objector Naomi.

I have considered the submissions made in respect of both parties.

I have also gone through the averments in the affidavits filed by the parties.

From all this, I came to the conclusion that Naomi the objector has failed to produce any evidence to show that she was "married" to the late BENSON WACHIRA IRUNGU, either under customary law or any other system of law.

Her claims that she was "married" to the deceased and that she lived with him as a wife in Webuye is not backed by any evidence. If she lived with him at all, did she live as a wife or a mistress?

The allegation that the deceased's benefits were paid to her and Catherine jointly, is also not backed by evidence, especially after Catherine has denied the allegation. There was no evidence from the administration of Pan Paper Mills Webuye, to confirm that they made payment to the 2 women jointly.

There is the further evidence showing that only Catherine and her children were recognised as the deceased's family. There was no reference of Naomi anywhere as a wife or a widow of the deceased.

For these reasons, I find that the summons for Revocation and or annulment filed by Naomi against the Grant of Letters of Administration intestate, issued to Catherine, have no substance and I proceed to dismiss the summons for Revocation with costs to Catherine the petitioner.

Dated at Nairobi this 4th day of July, 2002.

JOYCE ALUOCH

HIGH COURT JUDGE