



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
HIGH COURT SUCCESSION CAUSE NO. 1815 OF 1997

IN THE MATTER OF THE ESTATE OF RAHAB KABUI RUITHA –(DECEASED)

RULING

Rahab Kabui Ruitha (hereinafter referred to as “the Deceased”) had two sons namely Simon Njenga Jones (hereinafter referred to as “Simon”) and Moses Gitau Ruitha (the 2nd Respondent). Simon is also deceased. The 2nd Respondent petitioned the subordinate Court for letters of administration over the estate of the Deceased. Although it is not quite clear what happened in the subordinate Court, the record thereof shows that the present applicant Serah Nyambura Njenga was at sometime called as a witness therein. Her testimony on that occasion reads as follows (see p. 11 of the record):-

“I come from Nakuru District. I know the parties in this case. The petitioner is a brother to my husband and the Respondent is my co-wife. I am the elder wife of Njenga. My mother in law had shared her land in Ndeiya in 1985. She gave Moses Gitau five (5) acres. The three acres were left to my mother in law. I produce letter of consent (ex. 2). My husband died before this case was filed. Myself and the Respondent should get three (3) acres.”

Upon cross-examination, she stated as follows”-

“I am supporting Moses Gitau Ruitha that he is entitled to five acres out of the Ndeiya land. I do not know whether the petitioner got a title for the five (5) acres. The land is in one title deed in name of my mother-in-law.”

The Decree of the subordinate Court was in pertinent part as follows:-

“IT WAS ORDERED:-

- 1. THAT, since justice has been met in the outcome of the suit, each of the parties will meet their own Costs.**
- 2. THAT, rectified certificate of confirmation of grant to issue in the names of both parties herein showing their respective shares as above ordered.....”**

I am not sure whether this can be called a decree but that is besides the point. What I glean from the foregoing with reference to the present proceedings is that the 2nd Respondent applied for a grant of representation over the estate of the Deceased. The 1st Respondent also made a separate application after that of the 2nd Respondent over the same estate. It is unclear what happened in that case except that the grant was rectified and issued in the names of both Respondents.

The Applicant now brings this application under section 76 of the Law of Succession Act (Cap. 160) and rule 44(1) of the Probate and Administration Rules to revoke or cancel the letters of administration granted to the Respondents. The basis of the application is that the Respondents failed to inform the

subordinate Court that she was one of the wives of Simon. It is not in dispute that Simon would have been entitled to inherit from the Deceased if he were alive. Although he survived her, it appears that her estate had not been distributed when he himself died. It is also not in dispute that Simon's wife or wives and children would be entitled to inherit his share in his absence.

At the hearing, the 1st Respondent and her witnesses denied that the Applicant was Simon's wife. However, I was not impressed by their testimony on the question. The 1st Respondent contradicted herself as to the year she got married to Simon. In her affidavit and on cross – examination she stated that she got married to him in 1965 yet in her examination in chief she said that she got married to him in 1961. In my view, this was a deliberate attempt to mislead the Court. She also stated on cross – examination that she only came to know the applicant when she filed this application yet she had admitted in her examination in chief that the applicant had attended both the Deceased's and Simon's funeral. She also admitted in cross-examination that she knew the applicant had once been married to Simon.

The second witness called by the 1st Defendant who claimed to have been Simon's "great friend" could not remember when Simon married the 1st Defendant. He admitted that the applicant had borne children with Simon but alleged that they were only "friends". He wanted this Court to believe that he was Simon's confidante yet he was not invited to an important customary ceremony by Simon when he received dowry for his daughter. He also fell for the trap and lied to this Court that Simon and the 1st Respondent got married in 1961.

The Applicant, on the other hand, impressed me as a candid old lady who was only interested in securing her rightful place in history. She bore for Simon five children. One died. I am satisfied that she was the wife of Simon.

Now, going to the other matter, it appears that the 2nd Respondent was taking advantage of the Applicant's trust in him. It was not denied that he asked her to testify in the cause in the subordinate Court by promising her that she would get her share. He lied to her. This constituted fraud on the part of the 2nd Respondent. The 1st Respondent is also guilty of fraud. The applicant's testimony in the subordinate cause was clear that she was Simon's wife yet she was not included in the grant. Her testimony that she did not know that the applicant was the Deceased's wife is a stunt. Why did she not challenge the applicant's testimony in the Subordinate Court?

In view of the foregoing, I allow the applicant's application dated 26/8/97 with costs.

DATED and DELIVERED at NAIROBI this 5th day of July, 2001.

ALNASHIR VISRAM

JUDGE