



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO. 113 OF 2008**

**IN THE MATTER OF THE ESTATE OF STANLEY MUGAMBI M'ITHILI (DECEASED)**

**FLORENCE MAKENA.....PETITIONER**

**Versus**

**ARIN NKATHA STANLEY.....APPLICANT**

**JUDGMENT**

**1. STANLEY MUGAMBI M'ITHILI** (“the deceased”) to whom this Succession Cause relates died on 20<sup>th</sup> June 2007. The petitioner petitioned for letters of administration intestate where it was stated that the deceased was survived by:

1. Florence Makena Muchiri - **Sister**
2. Caroline Kathambi - **Daughter**
3. Severina Gaiti - **Daughter**
4. Jackline Kathambi - **Daughter**

His asset was listed as: **Antubetwe/Njoune/648.**

2. A grant of letters of administration intestate was made to the petitioner on 13<sup>th</sup> November 2008. She applied for confirmation of grant through summons dated 24<sup>th</sup> March 2009. An objection was raised through chamber summons dated 10<sup>th</sup> March 2009 filed pursuant to **Section 47 and 76 of the Law of Succession Act, Rule 44 of the Probate and Administration Rules and Section 128 of CAP 300 Laws of Kenya and all other enabling provisions of the law.** The applicant seeks among other orders the revocation and or annulment of the said grant.

1. The grounds for applying as set out in the application and the supporting affidavit of Arin Nkatha Stanley sworn on 10<sup>th</sup> March 2009 are:
2. That the petitioner filed the cause secretly and without her consent and or renunciation. The objector is the wife of the deceased and has two minor children. Yet, the petitioner is a sister to the deceased.
3. That the deceased has another daughter, Caroline Kathambi, out of wedlock who is now an adult and married.
4. That the petitioner obtained the grant by making false statements and concealment from the court of something material to the grant.
5. Furthermore, the petitioner fraudulently obtained a false letter from the chief together with a forged death certificate of which she went ahead and filed this cause and
6. That the petitioner introduced strangers in the estate.

3. Florence Makena Muchiri opposed the application through her replying affidavit sworn on 14<sup>th</sup> April 2009. She deponed that the deceased

was married to one Elizabeth Kagendo under Kimeru Customary Law and they had two children: Gaiti and Kawira who are adults and married. That when the deceased got into an accident he was rendered crippled which resulted in him using a wheelchair which resulted in her employing the objector as a maid. Hence, the alleged marriage between the two was conducted secretly of which she came to know about during the deceased's burial.

4. This matter was heard *vide viva voce* evidence. **AW1 Arin Nkatha** tendered her affidavit sworn on 10<sup>th</sup> March 2009 as her evidence. She asserted that the deceased was crippled when they got married during a mass wedding ceremony. Their wedding was advertised by the church calling for any objection of which no one objected. It is not true that she was employed as a maid by the petitioner as they met with the deceased at her place of work. She knows all the deceased's sisters but not the petitioner. She affirmed that she had not authorized the petitioner to file this cause and prays that the grant be revoked and she gets back her husband's estate.

5. **AW2 George Kimandiu M'iguari** father of the applicant testified and declared that the deceased was his son – in law. That in 2002 the deceased came for dowry negotiations with two of his family members as his parents had died. They later wedded in church of which he did not attend as he was sick but his wife attended. That it is not true that his daughter was in primary school as she had already dropped out in 1982 and did not have a child before marriage. Neither was she a maid for the deceased.

6. **AW3 David Murunge** adopted his statement dated 12<sup>th</sup> February 2019 as his evidence. He confirmed that he was present in church and signed the certificate as the best man. He attested that the marriage was announced three times without objections. After the demise of the deceased the applicant was chased away from his home together with her children. The wedding was a mass wedding but he saw some relatives of the deceased at the wedding.

7. At the close of Objector's case, the petitioner gave a sworn testimony and called three witnesses. **PW1 Florence Makena Wachira** adopted her statement dated 2<sup>nd</sup> May 2013 as her evidence. She reiterated what she had stated and further averred that apart from hiring the applicant she hired a gentleman called Kithinji to move the deceased around. He is the father of the alleged children said to be fathered by the deceased. Since the deceased's first wife who the deceased had separated from used to come back and help him informed her that the deceased was sexually inactive. Thus, the applicant has forged all the certificates of birth for her children of which she reported to the police. That upon investigation she learnt that the alleged marriage between the deceased and applicant was fake as it had bans as that they gate-crashed the public wedding ceremony and got falsely married.

8. **PW2 Samwel Kaberia** retired pastor of EAPC adopted his statement dated 2<sup>nd</sup> March 2013. He stated that he officiated the wedding between the deceased and applicant and signed the certificate. He allowed the solemnization of the marriage even when it was not announced three times. But if he knew there was a problem he would not have officiated it

9. **PW3 Judith Kagendo** adopted her statement dated 2<sup>nd</sup> May 2013 as her evidence. She affirmed that she was married to the deceased according to Kimeru Customary Law and had three children but has no birth certificates. That they later divorced in 1970s but used to go see him. She avowed that since the deceased got into an accident he was not sexually active.

10. **PW4 Julia Kananu** tendered her statement filed on 30<sup>th</sup> July 2018 as her evidence. She stated that she is one of the persons who bought a plot from Muchiri, father of the deceased. When Muchiri died the elders told the deceased to apply for succession and give her and the buyers their titles. But Mugambi died before he did so.

## ANALYSIS AND DETERMINATION

11. Revocation and or annulment of the grant issued to the petitioner on 13<sup>th</sup> November 2008 is the centre of controversy. **Section 76 of the Law of Succession Act** stipulates grounds upon which a grant may be revoked and or annulled. The applicant in this case stated that the petitioner filed the cause secretly without her consent and through concealment of material facts from the court. Thus, she obtained the grant fraudulently.

12. In taking out the letters of administration preference is usually given to certain persons where the deceased has died intestate. See **Section 66 of the Law of Succession Act**.

13. The applicant stated that she is the surviving wife of the deceased as dowry was paid to her father, **AW2**, and thereafter they got married in church through a mass wedding. This is not refuted by any of the parties except the petitioner stated that the applicant and deceased were falsely married. According to **PW2** who is the pastor that officiated the wedding stated that he would not have officiated a marriage if he knew that there was a problem. Consequently, the evidence adduced by, show that the applicant was the wife of the deceased. The evidence by the petitioner does not show any fraud in the solemnization of the marriage between the deceased. Her evidence does not also prove that the applicant was not a wife but an employee of the deceased. **PW3** separated from the deceased in the 1970s. And evidence show that the applicant took care and lived with the deceased after the accident which crippled him. I should state that this case demonstrates sheer gullibility of humans when they place more value on the assets of the deceased than the deceased himself when he was alive,

14. With regard to the children sired by the applicant and Kangendo, they are claimed to be fathered by the deceased. Kangendo stated that she and the deceased had three children however she has not provided any evidence consequently the said children cannot be regarded as the deceased. As for the applicant she has provided birth certificates of her two children which both state that the deceased is the father. **PW1** contended that the birth certificates are forged. She claimed to have reported the matter to the police but did not provide any evidence to support those allegations. Furthermore, contentions have been made that ever since the accident the deceased became sexually inactive in the hope to prove that the deceased could not have fathered the applicant's children. No medical or cogent evidence has been produced to prove these claims. As a result, I find and hold that the two children, Ruth Kanana and Angelo Munene are children of the deceased.

15. As a result, according to **Section 66 of CAP 160** the applicant has priority over the petitioner and her consent and or renunciation was not

given. Furthermore, the petitioner did not mention of their existence to this court.

16. Accordingly, I make the following orders:

a. The grant of letters of administration intestate issued to Florence Makena Muchiri on 13<sup>th</sup> November 2008 is revoked.

b. Fresh grant of letters of administration intestate be issued to Arin Nkatha Stanley.

c. The applicant shall file and serve a summons for confirmation of grant within 14 days of today together with an affidavit stating all the assets and dependants of the deceased and how the estate ought to be distributed. Upon service the petitioner may, if she considers herself a dependant, file an affidavit on distribution of the estate in 14 days of service. No orders as to costs.

**Dated, signed and delivered in open court this 8<sup>th</sup> May 2019**

.....

**F. GIKONYO**

JUDGE

In presence of

Wamache for Kimathi E for Applicant

B.G Kariuki for petitioner/respondent

.....

**F. GIKONYO**

JUDGE