



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

SUCCESSION CAUSE NO. 289 OF 2007

IN THE MATTER OF THE ESTATE OF P K K (DECEASED)

M C K.....PETITIONER

VERSUS

J C R.....OBJECTOR

JUDGMENT

[1] The Deceased herein, P K K, died intestate on **22 August 2007**, leaving behind a widow, **J C R**, the Objector herein, and her five children, who were all minors at the time. The five children are:

- [a] EJ – daughter (17 years)
- [b] HJ – daughter (15 years)
- [c] EK – son (13 years)
- [d] PK – son (12 years)
- [e] PK – son (10 years)

[2] The deceased was also survived by a son who is said to have been born out of wedlock and who he was living with and supporting at the time of his death, namely M C K. He is the Petitioner herein and was aged 19 as at **16 October 2007** when the Petition was filed by him through the law firm of **M/s Chemitei & Company Advocates**; and, whereas he averred in the Petitioner for Letters of Administration Intestate that every person having an equal or prior right to a grant of representation herein had consented or renounced such right, or had been issued with a citation to renounce such right, the widow of the Deceased, **J C R**, had a cause for complaint. She filed an Objection to Making Grant dated **28 January 2008** contending that:

[a] Under **Section 66** of the **Law of Succession Act**, she had the first priority to administer the estate of the Deceased;

[b] She is the only legal wife of the Deceased and therefore qualified and competent to administer his estate;

[c] The Petitioner herein is not qualified to administer the estate of the Deceased;

[d] She did not and does not consent to the making of the Grant of Letters of Administration to the Petitioner herein or any other person whatsoever and the purported consent filed herein on **17 October 2007** was not duly executed, is a forgery and is otherwise illegal.

[3] Subsequently on the **5 March 2008**, the Objector filed an Answer to the Petition along with her Cross-Petition, whereby she acknowledged that the Deceased was survived by herself and her 5 children as well as the Petitioner, M C K. Unlike the Petitioner who only listed the Benefits from the Ministry of Local Government as the only asset comprising the Deceased's estate, the Objector listed the following assets as forming part of the estate:

[a] Eldoret Municipality Block 8/XXX

[b] Eldoret Municipality Block 2/XXX

[c] Nakuru Municipality Block 23/XXX

[d] Uasin Gishu/Kipkabus /XXX

[e] Uasin Gishu/Kipkabus/XXX

[f] Family Bank Account No. 858963-101-XXXXX

[g] Kenya Commercial Bank Account No. 170 250XXX

[h] Benefits from Eldoret Water and Sanitation Co. Ltd

[i] Benefits from the Ministry of Local Government

[j] Benefits from LAP TRUST

[4] In her Answer to the Petition for Grant, the Objector mentioned that the Petitioner had failed to give a true inventory of the Deceased's estate and that this was one of the reasons she had filed her Cross-Petition. The matter has been pending since, as the parties got pre-occupied with applications for the payment of funds for the education of the both the Petitioner and the Objector's children. Ultimately, the Court was moved by the Objector, vide her application dated **9 August 2018** for the Petition and Cross- Petition to be prioritized for hearing and determination. Accordingly directions were issued that the Petition and Cross-Petition be disposed of by way of written submission, noting that the parties are in agreement on most, if not all of the facts; and that the dispute is simply on who, between the Petitioner and the Objector, has the right to apply for Grant of Letters of Administration Intestate to the Deceased's estate.

[5] On behalf of the Petitioner, it was the submission of **Mr. Kiboi** that, as at **5 March 2008** when the Cross-Petition was filed, all of the Objector's children were minors; and that the Petitioner was the only adult son in the family of the Deceased; and therefore the only one who could have filed the Petition, because the Objector is unfit to administer the estate. The reasons for that assertion by Petitioner were stated as hereunder:

[a] At the time of filing the Cross-Petition, the Objector did not disclose that there was another Succession Cause filed by her, being **Eldoret Succession Cause No. 316 of 2009;**

[b] The Objector had ill intentions of selling the property comprising the estate, including **Nakuru Municipality Block 23/XXX** before the conclusion of the Succession Proceedings; and therefore, that her actions amounted to intent to intermeddle with the estate;

[c] The Objector collected the rent from the estate premises, being **Eldoret Municipality Block 8/XXX** and the residential properties in **Kipkarren Estate** but failed to account for the same as well as the monies received by the estate from **LAPTRUST Fund**, in spite of demands by the Petitioner for account.

[6] It was thus the submission of **Mr. Kiboi** that it is only the Petitioner who can administer the estate for the benefit of the Deceased's beneficiaries. He relied on **Section 47** of the **Law of Succession Act** and the cases of **Titus Mbaabu M'Iracha vs. Justus Muthamia & 3 Others [2013] eKLR; Yunes Kerubo Oruta & Another vs. George Kombo Oruta & Others [2015] eKLR;** and Re the estate of **Stephen Kipruto Kiprop (deceased) [2018] eKLR**. Counsel urged the Court to find that even though a widow ranks in priority over the children, sufficient cause has been shown herein why the Objector should not be issued with Grant. He concluded his submissions by proposing that, should the Court find in favour of the Objector, then an order should be made, in the interest of justice and fairness, for a joint administration with the Petitioner, to pave way for the expeditious distribution of the estate herein.

[7] In the written submissions filed by **Mr. Lilan**, Counsel for the Objector, it was expressly conceded that the Petitioner is the son of the Deceased and that he was therefore one of the dependents of the Deceased for purposes of **Sections 26, 27, 28 and 35(3)** of the **Law of Succession Act**. He added that the Petitioner also expressly conceded that the Objector is the only widow of the Deceased, as declared by him in the Affidavit in Support of Petition, **Form P&A 5**, filed with the Petition on **17 October 2007**. Accordingly, he proposed that the only issue in contest is who is entitled to be issued with Grant of Letters of Administration Intestate; and in this regard, he directed the attention of the Court to **Sections 35 and 66** of the **Law of Succession Act**. Counsel also relied on **Succession Cause No. 333 of 2011: In the Matter of the estate of Jamuel Muchiri Kiragu; Succession Cause No. 46 of 2015: In the Matter of the estate of Hillary Wambugu;** and **In the matter of the estate of Aggrey Mukanga Wamira** on the question of who between the Petitioner and the Objector has priority for purposes of Grant. On the basis thereof, Counsel for the Objector prayed that the Petition for Grant be disallowed and that the Objector's Cross-Petition be allowed.

[8] I have given careful consideration to the Petition and Cross-Petition filed herein along with their respective affidavits. I have also paid attention to the written submissions filed by Learned Counsel for the parties. There is no dispute that the Petitioner is one of the sons of the Deceased. Indeed, he was the only adult son as at **17 October 2007** when the Petition was filed. There is, likewise, no dispute that the Objector is the only widow of the Deceased, there being no controversy that the Petitioner was born out of wedlock, though acknowledged, taken in and provided for by the Deceased in his lifetime. In the premises, **Section 66** of the **Law of Succession Act** provides that:

“Where a deceased has died intestate, the court shall save as otherwise expressly provided, have the final discretion as to the person or persons, to whom a grant of letters of administration shall in the best interest of all concerned, be made, but shall

without prejudice to that discretion, accept as a general guide the following order of preference:-

- (a) Surviving spouse or spouses, with or without association of other beneficiaries;
- (b) Other beneficiaries entitled on intestacy, with priority according to their beneficial interest as provided by Part V;
- (c) The Public Trustee; and
- (d) Creditors;

Provided that where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executors who prove the will.

[9] It is manifest from the aforesaid provision that, as the surviving spouse of the Deceased, the Objector is ranked in priority over the Petitioner. She has not renounced her right, nor has she consented to the Grant being issued to the Petitioner. Although allegations were made that she is not fit to administer the estate, no evidence was availed before the Court to prove those allegations. In particular, there is no proof that she attempted to sell some of the property comprising the estate, including **Nakuru Municipality Block 23/212** as alleged. As regards the allegation that she has been collecting rent without accounting for the same, the same formed the subject of the various applications filed herein by the parties; and admissions made by the Objector and explanation furnished that the monies were applied towards the upkeep of the deceased's children, much in the same way that the Petitioner admitted to receiving funds from **Alliance Media** on account of a bill board that stood on one of the Deceased's properties; namely **Eldoret Municipality Block 8/XXX**. Moreover, there are consent letters on record dated **14 February 2011** and **26 June 2012** which were endorsed by the Court, confirming that the Petitioner also benefitted from those interim payments for purposes of funding his education and upkeep. In any event, all these outgoings will have to be accounted for at the distribution stage; and should therefore be no reason to disqualify the Objector for.

[10] In the light of the foregoing, I am satisfied that it is the Objector, as opposed to the Petitioner, who has the right to administer the estate of the Deceased herein. Accordingly, I would dismiss the Petition and allow the Objector's Petition and order that she be issued forthwith with a Grant of Letters of Administration Intestate in respect of the estate of **P K K** (Deceased). The costs of the Petition and the Cross-Petition shall be paid from the estate.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 18TH DAY OF JUNE 2019

OLGA SEWE

JUDGE