

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAMIRA

CIVIL APPEAL NO. 17 OF 2018

ERICK ONGAGA MOTURI.....APPELLANT

=VRS=

GEORGE NYANUMBA ARASA.....RESPONDENT

{Being an appeal from the Ruling of Hon. A. C. Towett – SRM Nyamira issued

on 9th August 2018 in Nyamira CM Succ. Cause No. 31 of 2017}

RULING

The proceedings in this case relate to the Estate of Moturi Ongaro, deceased, who died intestate on 13th April 1990 domiciled in Nyamira County. The proceedings began by way of a Citation in which Erick Ongaga Moturi the appellant herein who is a grandson of the deceased cited the widows of the three sons of the deceased. When they filed their response it was to assert that the respondent was also a child of one of the sons of the deceased and hence bonafide beneficiary of the Estate. The trial magistrate agreed with them and so proceeded to grant Letters of Administration to the appellant and the citors and ordered them to bring on board all the beneficiaries of the Estate including the respondent.

Being aggrieved the appellant preferred this appeal. In the grounds of appeal in the memorandum of appeal filed herein the appellant faults the trial magistrate for not appreciating that the respondent's father is one Joseph Nyanumba Arasa who is not a son of the deceased in this case. By this appeal the appellant urges this court to set aside the ruling and orders of the Learned Magistrate and that he be allowed to take out Letters of Administration. He seeks also to be granted the costs of this appeal.

The appeal is opposed. Both parties were represented by Counsel who duly filed written submissions. I have considered the submissions carefully. I have also considered the evidence adduced in the trial court so as to arrive at my own conclusion. The gist of the trial magistrate's ruling was that the Estate of the deceased would be administered by the appellant and the citees Annah Baweti Ongaro and Jemiah Ogwankwa. In the citation the appellant acknowledged that those were the persons that ranked highest in priority to take out the grant of Letters of Administration into the Estate of the deceased being the widows of the sons of the deceased. The appellant is himself a grandson of the deceased. It would therefore be his mother who would rank in equal priority with the citees. Be that as it may I find no error in the decision of the trial magistrate that the appellant and the citees should jointly apply for the grant of Letters of Administration into the estate of the deceased and that order is upheld. It is my finding however that it was premature for the court to determine the issue of whether or not the respondent is a beneficiary of the estate given that the respondent did not himself make any application to be declared a beneficiary. That issue should be determined in the succession cause should the respondent make an application and after hearing all the parties. To the extent that this appeal seeks to oust the order of the trial magistrate that the citees and the citor take out the grant of Letter of Administration in this estate it has no merit and it is dismissed. It however succeeds to the extent that the trial magistrate ruled that the respondent is a beneficiary of the estate without any application by himself to that effect. The issue ought to be determined in the succession cause once the grant is issued. Given the nature of the proceedings I shall make no orders as to costs. It is so ordered.

Signed, dated and delivered in open court this 18th day of July 2019.

E. N. MAINA

JUDGE