

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 295 OF 1972

IN THE MATTER OF THE ESTATE OF NOOR BIBI W/O MOHAMED GULAM FARID (DECEASED)

MOHAMMED MAZHAR FARID.....APPLICANT

VERSUS

FARHAN BAGHBAN MOHAMMED SIDDIQUE

MOAZZAM FARHAN SIDDIQUE.....RESPONDENTS

RULING

1. The deceased Noor Bibi w/o Mohamed Gulam Farid died intestate on 27th March 1970 at Nairobi. She was the owner of Plot No. 1632/1 in Pangani in Nairobi (now L.R. No. 209/1935 with a stone building comprising three self-contained apartments therein also known as House No. 6 Pareto road in Pangani). On 5th October 1972 her son Mohamed Abu Zaffar Farid petitioned for the grant of letters of administration intestate. The grant was issued on 31st October 1972. It has not been confirmed.

2. On 13th December 2018 the applicant Mohamed Mazhar Farid (he is the younger brother of the petitioner) filed the present application seeking the revocation of the grant and, instead, he be appointed the administrator of the estate. His case was that the petitioner had on 21st February 2014 (“MMF-3”) relinquished his claim to the estate, and asked that it be given to him (the applicant).

3. The respondents Farhan Baghban Mohammed Siddique and Moazzam Farhan Siddique are children of the late Khurshid Jamal Siddique who was the sister of the applicant and daughter of the deceased. They filed an affidavit of protest in response to the application. They are opposed to the applicant being appointed as the administrator or sole administrator of the estate of the deceased because he is 80 years old, a British citizen, senile, divisive and stays abroad. They stated that they were born on the property where their mother stayed and died, and are therefore most suitable to administer the estate. They claimed that the intention of the applicant was to sell this family property, and therefore disinherit and dispossess them.

4. The applicant was opposed to the respondents being appointed administrators of the estate of the deceased. According to him, the respondents have no legitimate claim to the estate. This is because, before the deceased died, she had left a document (“MMF-1”) dated 12th March 1960 indicating that she was giving up all claims to the property under Muslim Law to the petitioner and applicant who were her sons.

5. I note that when the petitioner filed the petition he indicated that the deceased had left other beneficiaries who were her daughters. They included the mother of the respondents.

6. In any case, this is not the stage to determine who will get what benefit from the estate. What is material is that both the applicant and the late mother of the respondents were children of the deceased. The respondents are grandchildren of the deceased and derive their benefit through their mother.

7. The applicant appeared before me. He is old but not senile. He is British citizen but visits Kenya. He has a claim to the estate of the deceased.

8. The grant was issued to the petitioner on 31st October 1972. This is a very long time ago. The petitioner did not seek the confirmation of the grant. It is indicated that he is no longer interested in the estate. Under **Section 76(d) (i) of the Law of Succession Act (Cap 160)**, if a petitioner has within one year failed to apply for the confirmation of the grant the same can be revoked.

9. Finally, therefore, I revoke the grant of letters of administration intestate in respect of the estate of Noor Bibi w/o Mohamed Gulam Farid that was issued to Mohamed Abu Zaffar Farid on 31st October 1972. A fresh joint grant shall be issued to Mohamed Mazhar Farid, Farhan Baghban Mohammed Siddique and Moazzam Farhan Siddique. The grantees, or any of them, shall within sixty (60) days petition for the confirmation of the grant. Mention on 16th October 2019.

DATED and DELIVERED at NAIROBI this 17TH day of JULY, 2019.

A.O. MUCHELULE

JUDGE