



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (FAMILY DIVISION)

SUCCESSION CAUSE NO 325 OF 2016

IN THE MATTER OF THE ESTATE OF JIMMY PALURAM JAGATRAM

BABURAM (DECEASED)

RULING

1. Before court for determination is an application dated 7th June 2018 filed by **David Jagatram Baburam Melaram**, one of the two administrators of the Estate and father to the deceased herein **Jimmy Paluram Jagatram Baburam**. The applicant is seeking for the following substantive orders;

i. **Stay of the Confirmation of the grant of letters of administration issued on the 19th of October 2017 to the applicant and his co-administrator Amina Shiraz Yakub (Amina) & distribution of the Estate pending determination of Malindi Criminal case No. 1 of 2016 Republic Vs Amina Shiraz Yakub**

ii. **That pending the determination of the criminal case against Amina Shiraz Yakub, the court do find that the Estate has only two beneficiaries namely, Mina Jimmy Paluram Baburam (Mina) & Junaid Jimmy Paluram Baburam (Junaid), sired by the deceased and Amina Shiraz Yakub, the co-administrator.**

iii. **Removal of Layla Naheed Abdullatif (Layla), a daughter of the widow as a beneficiary**

iv. **The cash assets of the Estate be collected, consolidated by the administrators and deposited with a reputable asset management company in Kenya for and on behalf of the two beneficiaries, Mina Jimmy Paluram Baburam & Junaid Jimmy Paluram Baburam until such time that the administrators can apply for confirmation and distribution of the assets**

v. **Lastly, provision for the maintenance & upkeep of Mina & Junaid pending confirmation and distribution.**

2. The application is predicated on grounds; firstly, that **Amina**, the widow and a proposed beneficiary of the Estate is accused of the murder of the deceased herein in **Criminal Case N.1 High Court Malindi** and ought not to benefit from the Estate until she is vindicated of the murder charge; in the meantime therefore is need to preserve and protect the estate which would otherwise suffer irreparable loss; Amina is a person of means and can take care of herself; secondly, **Layla** is not a beneficiary of the Estate as she is not a child of the deceased and both her parents are alive., thirdly provision for the upkeep of the two children of the deceased and the widow be provided.

3. In the affidavit in support the applicant has reiterated the grounds above and in addition deposed that most of the assets of the Estate are in cash and if the monies are distributed before determination of the criminal case, and in the event, Amina is found culpable, the Estate may not be able to recover monies likely to have been expended by her and it will have suffered irrecoverable loss. However, the Estate stands to benefit if the monies are consolidated and invested with a reputable management company, Further **Layla's** biological father is alive, is a man of means and she is therefore not a beneficiary of this Estate. Lastly, since the two children of the deceased and **Amina** namely **Mina & Junaid** are uncontested beneficiaries and require necessary upkeep, maintenance, school & medical expenses provision for the same be made.

4. The application was opposed by **Amina** in her affidavit dated 22nd June 2018, for being absurd and lacking in merit as it seeks to violate the law; as regards the criminal case facing her, she is innocent until proven guilty; she is entitled to the personal effects and household goods of the deceased and life interest in the residue of the net Estate; further in the unlikely event she is convicted, her life interest will cease by operation of the law; and therefore the Estate is not likely to suffer any irreparable damage, on the other hand since she is innocent until proven otherwise, if her enjoyment of the Estate is interfered with she will have been denied her right to life interest in the Estate; as regards **Layla**, the deceased treated the child as his own daughter. He had listed himself as her father in school, paid her school fees and other expenses. The deceased had also listed her as one of his beneficiaries in his Life insurance policy and therefore the child is a beneficiary and has equal interest in the Estate as her siblings.

5. As regards the Estate, she proposed that cash assets be collected and placed in a fixed deposit account to be operated by the two Administrators. She has no issue with the upkeep and maintenance of the children safe that all her three children ought to be catered for.

That she will at the right time be making an application for such upkeep. Lastly there is no justifiable reason demonstrated why the grant should not be confirmed.

6. Having considered the application, the response and submissions made, the issues for determination are;

- i) Whether or not to stay confirmation and distribution of the Estate pending hearing and determination of **Malindi High Court Criminal Case No. 1 of 2016 Republic Vs Amina Shiraz Yakub**,
- ii) Whether or not to remove the name of **Layla** as a beneficiary of the Estate,
- iii) Whether the cash assets of the Estate be consolidated and placed with a management company pending confirmation and distribution or whether the same be placed in a fixed deposit account and managed by the administrators,
- iv) Whether the court should make provision for upkeep of the minor children of the deceased with his wife Amina

7. In my considered view it is important to consider the peculiar circumstances and background related to this matter as the same will inform the decision to be arrived at.

The applicant is the father of the deceased whereas the respondent is the widow. The respondent moved the court for grant of representation ad litem on the 17th of February 2012 together with her own father as proposed administrators, and the limited Grant of letters of Administration Ad Litem was issued on the 2nd of March 2013. On the 20th of April 2016 the two holders of the Grant of letters of Administration Ad Litem petitioned the court for Letters of Administration intestate.

On his part the applicant moved the court under certificate of urgency on the 21st of July 2016, wherein he inter alia argued that he ranked in priority to the 2nd proposed administrator in applying for representation yet his consent had not been obtained; that the respondents father had no consanguinity with the deceased and had no locus for being one of the administrators, he cited fraud and conflict of interest as relates to the moral fitness of the widow in being appointed as an administrator in view of the pending Criminal case, he sought for stay of the issuance of the grant and extension to be allowed to file his objection. With his application he filed an objection to the making of a granting as the widow was a suspect in an inquest regarding the death of the deceased.

On the 7th of October 2016 the parties agreed by a

consent to be joint administrators.

On 10th of October 2016 the Amina was charged with the offence of murder of her husband.

To be noted are accusation and counter accusation of intermeddling by each of the parties.

8. Section 71 of the Law of succession Act empowers the court where there is a dispute to postpone confirmation of a grant for such period of time depending on the circumstances of the case.

Rule 73 of the Probate and Administration Rules provides on its part that nothing in the rules shall limit or otherwise affect the inherent powers of the court to make such orders as maybe necessary for the ends of justice to be met.

9. In determination the matter the overriding consideration will be balancing the interest of justice between the parties. The interest of the widow who though charged with murder remains innocent until proven guilty and the interest of the Estate which will stand to loose in the event the widow is found guilty as she would have benefitted from the Estate contrary to 'the slay rule principles' as espoused in Section 96 of the Law of succession Act. And the interest of Layla as a dependent and an heir of the deceased

10. Having carefully considered the matter it is my opinion that the question as to who is an heir to the deceased is premature for now. The court may require more evidence to be placed before it at the opportune time in order to make a determination.

11. As regards maintenance both parties appear to agree on the same save for who should be subject of such provision. Details of the cash assets and the needs of the children may have to be agreed upon or brought before court for determination, the person charged with the responsibility of caring for the children has not raised the issue yet. The issues will therefore be left in abeyance for now.

12. The widow was said to be a person of means, this she did not refute or challenge and assuming that the claim is therefore true, clearly, she does not need any provision to be made for her sustenance.

From the record the cash assets form the bulk of the Estate and were the court to distribute the same and the widow utilises part of the same how would the Estate recover the loss in the unlikely event of her conviction? In contrast should the widow be exonerated her entitlement would be intact. Justice of the case militates towards a stay of confirmation and distribution pending hearing and determination of the criminal case currently facing the widow. With liberty for the children to apply as dependants.

13. From the record, it is not lost that there is bad blood between the two administrators, which may not augur well for purposes of administration. Mistrust & anger are exhibited by the respective pleadings. The most reasonable way of managing the Estate will be to allow a third party do so. I therefore direct and order that the parties do agree within the next Ten (10) days of today's date on a reputable

asset Management company to collect, consolidate and manage the said assets until further orders of the court.

Dated and Delivered in Nairobi this 4th day of October, 2108

ALI-ARONI

JUDGE