



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISC: APPLICATION NO. 1 OF 2017

IN THE MATTER OF THE ESTATE OF THE LATE OLE KUKUNI

JAMES MANWAH OMARORO.....1ST APPLICANT

JANE NYAKERARIO OMARORO.....2ND APPLICANT

VERSUS

NEMUTA ENE KUKUNI.....RESPONDENT

RULING

JAMES MANWAH OMARORO and JANE NYAKERARIO OMARORO (hereinafter the 1st and 2nd applicants) took out a summons under **Section 54** and **Clause 14** of the **fifth Schedule of the Law of Succession Act** and **rr. 49** and **73** of the **Probate and Administration Rules** seeking orders:

1. THAT the Respondent NEMUTA ENE KUKUNI be appointed as the legal representative of the estate of LEMERIA OLE KUKUNI for the purpose of representing the deceased herein in Nakuru High Court ELC Case No.217 of 2013, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in that suit, until a final decree shall be made therein, and carried into complete execution.

2. THAT provision be made for the cost of this application

The application is grounded upon the affidavit of the 1st applicant and on grounds:

1. THAT the applicants have previously commenced proceedings in Nakuru High Court ELC Case No.217 of 2013 over a piece of land comprised in NAROK/CIS MARA/OLELESHWA/91 where the deceased herein is named as the 1st defendant.

2. THAT the deceased passed on sometime at the beginning of the year 2016 during the pendency of the aforesaid suit.

3. THAT to the best of the knowledge of the applicants no application for a grant of letters of Administration has been made in respect of the deceased's estate.

4. THAT the respondent herein is to the best of the applicants' knowledge the only widow of the deceased.

5. THAT the aforesaid Nakuru High Court ELC Case No.217 of 2013 is in danger of abating as against the 1st defendant therein (the deceased herein) unless the present application is heard and determined expeditiously.

The gist of the supporting affidavit and grounds is that the deceased herein was the defendant in ELC Case No.217 of 2013 pending at the High Court at Nakuru. Since the passing on of the deceased, no application for a grant of letters of administration has been made in respect of the deceased's estate.

It is now almost an year since the death of the deceased and there being no substitution of the deceased in the suit ELC No.217 of 2013, the said suit shall abate.

To the best of the applicants' knowledge, the Respondent is the only widow of the deceased.

The application is opposed and in a replying affidavit, Nemuta Ene Kukuni (hereinafter the Respondent) depones that she is the widow of the late Lemeria Kukuni who died on 24/1/2016. She has never met the applicants. Succession Cause No.70 of 2016 has since been filed in respect of the estate of Lemeria Kukuni at Narok Chief Magistrate's Court. It would thus be a duplication of process and an abuse of the court process to allow this application.

In oral submissions, counsel argued along the lines of supporting affidavit and grounds in support on the one hand and the replying affidavit on the other and I need not reiterate the same.

The uncontested facts are that Lemeria Kukuni died on the 24th January, 2016. He was the defendant in ELC Case No.217 of 2013. The Respondent is the widow of the deceased. A Succession Cause has been initiated at the Chief Magistrate's Court at Narok by the Respondent and another. No administrator has been appointed yet.

It is the law that if the Defendant (now deceased) in ELC No.217 of 2013 is not substituted within one year from the death, the case shall abate.

The Respondent is not candid or forthright when she states that allowing the orders sought herein will be duplication of the legal process for the simple reason that she is aware that neither her nor anyone else has taken out letters of administration in respect of the estate of Lemeria Kukuni be they in the form of a full grant or a limited one.

It follows therefore that to secure the interest of the applicants by ensuring that the suit ELC No.217 of 2013 does not abate, it is only fair and just that the Respondent be appointed the legal representative of the estate of Lemeria Kukuni for the sole purpose of representing the deceased in Nakuru High Court ELC Case No.217 of 2013.

With the result that pending the appointment of the administrator(s) in respect of the estate of Lemeria Kukuni in Petition No.70 of 2016, Nemuta Ene Kukuni is hereby appointed the legal representative of the deceased, Lemeria Kukuni for the sole purpose of representing the estate of the deceased in Nakuru High Court ELC Case No.217 of 2013.

Dated, Signed and Delivered at Nakuru this 18th day of January, 2017.

A. K. NDUNG'U

JUDGE