



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 53 OF 1994

In the matter of the estate of M'LITHARA KAMANJA - DECEASED

AND

JULIA CIORWIRO.....PETITIONER

VERSUS

STANLEY KUBAI.....1ST APPLICANT

STANLEY MWITI.....2ND APPLICANT

TABITHA KOOLO JUSTUS.....3RD APPLICANT

RULING

1. By a summons dated 24th October, 2014, JOYCE NTOMITHEGA (hereinafter “the Applicant”) applied to be made an Objector in the place of TABITHA KOOLO JUSTUS, the 3rd Applicant in these proceedings (hereinafter “Tabitha”). The same was brought under Rule 73 of the Probate and Administration Rules. The grounds upon which the application was made was contained in the body of the Motion and the Supporting Affidavit of the Applicant. These were that Tabitha was now deceased; that the Applicant was the only daughter of Tabitha and that she was desirous of pursuing Tabitha’s entitlement in these proceedings.

2. In the Supporting Affidavit, the Applicant swore that her mother passed away on 15th July, 2013 during the pendency of these proceedings and that she, the Applicant, was desirous of pursuing the cause herein on behalf of her late mother.

3. The application was opposed by the Petitioner, through her Relying Affidavit sworn on 23rd February, 2015. She contended that the estate of her late husband, JUSTUS M'LITHARA KAMANJA (“the deceased”) was distributed long ago and each beneficiary, including the beneficiary, had received his/her share as well as title thereto and developed their own portions; that Tabitha had filed an application for provision but had failed to pursue the same during her lifetime; that the Applicant had throughout accompanied Tabitha to Court and had never raised any objection to the proceedings; that Tabitha had no claim in the estate of the Petitioner’s husband and if there was any, the same was only a life interest which had been extinguished by her demise.

4. The other Objector represented by Ms. B. G. Kariuki & Company Advocates also opposed the

application through Grounds of Opposition dated 23rd February, 2016. He contended that the estate had been distributed long ago and it would be difficult to re-open the distribution. That in any event, the Applicant was a beneficiary who had already been catered for.

5. In his submissions on behalf the Applicant, Learned Counsel Mr. Mwanzia submitted that as the only daughter of Tabitha, the Applicant had the right to be enjoined and pursue her mother's entitlement. That the contentions of the Petitioner and the Objectors could only be valid after the Applicant had been joined. That the Applicant did not require any grant over the estate of her later mother to acquire the legal standing to pursue her late mother's interest in this Cause. Ms. Mwangi, Learned Counsel for the Petitioner submitted that the estate of the deceased was distributed way back in October, 1999 whereby the Applicant got 0.10 acres in Plot No. 2164; that there was therefore no Cause pending capable of having a joinder; that Tabitha had applied for provision on 20th March, 2000 but died before her rights were determined. That in her said application, she had claimed that she used to get cash handouts and used to cultivate Plot No. 2164. Mr. B. G. Kariuki, Learned Counsel for the other Objectors relied on his Grounds of Opposition and urged the Court to dismiss the application.

6. I have considered the Affidavits on record, and the submissions on record. I have also considered the entire record. In order to understand the circumstances surrounding the application, it is proper to set out the background of this matter. The deceased in this matter died on 15th September, 1992 whereby the Petitioner, as the widow, filed the present Cause on 27th May, 1994 to administer the estate. After protracted objection proceedings, the protagonists filed an Amended Consent in court on 6th October, 1999 distributing the deceased's vast estate amongst the beneficiaries. That consent was signed by the Petitioner, Stephen Kiambati who was by then the sole Objector, Ms. Mwangi and Mr. B. G. Kariuki. In No. 20 of the list of beneficiaries to whom the estate was distributed is one Joyce Akunyu who was given 0.10 acres in Plot No. 2164. Pursuant thereto a Certificate of Confirmation of Grant was issued on the same date.

7. On 6th November, 2000, the firm of Kaberia Arimba & Company filed a summons under Rules 45 and 75 of the Probate and Administration Rules and Section 26 of the Law of Succession Act Cap 160 Laws of Kenya (hereinafter "the LSA") seeking two prayers:-

"1. The honourable Court be pleased to join and include TABITHA KOOLO JUSTUS as one of the dependants of the deceased JUSTUS M'LITHARA KAMANJA in this Cause.

2. No grant of representation to the estate of the above-named JUSTUS M'LITHARA KAMANJA (deceased) who died on 15/10/92 having been confirmed, such reasonable provision be now made for the Applicant as dependants of the deceased out of his net estate as the Court deems fit."

8. By a Ruling made on 13th July, 2007, Lenaola J. struck out that Application on the basis that it was barred by Section 30 of the LSA. Thereafter, by a Summons dated 4th February, 2008, Kaberia Arimba & Company yet again applied for the revocation or annulment of the grant. In her Replying Affidavit sworn on 7th July, 2008, the Petitioner deposed that the said Tabitha Koolo had been divorced long before she, the Petitioner, was married by the deceased and that Tabitha had re-married to one John M'Ethangatha. That nevertheless, the Petitioner had distributed 0.10 acres to Joyce Akunyu, the daughter of Tabitha. That Application remained unprosecuted until the said Tabitha passed away on 15th July, 2013 as per the Certificate of Death No. 249844 dated 19th May, 2014. This then is the background to the present application.

9. Without making any findings on the application by Tabitha Koolo dated 4th February, 2008, it is clear that she sought to enforce what she thought was her own personal right and/or interest over the estate of the deceased. In the present application, the Applicant seeks to be enjoined and take over the prosecution of that application. Her only basis is that she is the only daughter of Tabitha Koolo. It is trite law that any legal right or claim that an individual has or possesses cannot be extinguished by one's demise per se.

Depending on the nature of that right or interest, the same merges with his estate. This in my view includes a right to sue. Tabitha claimed to be entitled to sue on her own right and not in conjunction with the Applicant. In that regard, her right to claim from the estate was personal. In those circumstances, no one can purport to step into her shoes and agitate that claim except a representative of her estate, if any.

10. In the present case, the Applicant is not a personal representative of the estate of her late mother. Being a daughter of Tabitha per se does not give her any right to be enjoined in the present proceedings and pursue the alleged rights of her mother. She has no locus whatsoever to be joined as an Objector having in mind that she has already been provided for in the distribution that was finalized in 1999.

11. In the circumstances, the application has no merit and the same is dismissed with costs.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 6TH DAY OF APRIL, 2017.

A. MABEYA

JUDGE

06/04/2017