



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**Misc 85 Of 2017**

**In The Matter Of An Application By Sergeant Haile Michael Desta Malu**

**RULING**

1. Through originating summons dated 12<sup>th</sup> June, 2017 filed the same day under certificate of urgency, the appellant herein Haile Michael Desta Malu sought for a declaratory order to issue confirming inheritance of the estate of Isaiyas Haile Michael Desta (deceased) issued to the appellant jointly with his wife Tebern Kidane Welday by the communal court of May Temenay P. Tsaserat Asmara in Eritrea on 7<sup>th</sup> December, 2016 be received and accepted in the Republic of Kenya and be issued by this court as an order made by a Kenyan court.

2. Application which is filed under Sections 5 and 6 of the Foreign Judgments (Reciprocal Enforcement) Act, Section 3 and 3A of the Civil Procedure Act and Order 37 of the CPPRs is supported by grounds on the face of it and affidavit in support deponed on the 12<sup>th</sup> June, 2017 by the applicant Sergeant Haile Michael Desta Malu.

3. In his affidavit, the applicant avers that sometime on 14<sup>th</sup> July, 2017, his son Isaiyas Haile Michael Desta died while domiciled in Kenya and that the deceased left no wife nor children.

4. On 19/6/2017, the applicant filed a petition for the sealing of a grant issued in another country. The same is supported by an affidavit sworn by the applicant on 15<sup>th</sup> June, 2017 in which the applicant filed a power of attorney (SH DM-1) signed by his wife Joseph Kidane Welday granting him authority to petition the high court of Kenya on his and her behalf for purposes of obtaining resealing orders in respect of a grant of letters of administration obtained jointly in an Eritrian Court pertaining to the estate of the deceased ...Isaiyas who died while domiciled in Kenya.

5. According to the appellant, the deceased who died while single and had no children had opened an account with Kenya Commercial Bank USD Account No. [particulars withheld] Eastleigh Branch with cash USD 37,000/=.

6. A translated version together original grant issued on 7/12/2016 by Communal Court of May Temenay P. Tsaserat Asmara was attached. A copy of the burial permit issued by the government of Kenya on 14/7/2016 was attached indicating that the deceased died on 11/7/2016.

7. I have considered the application herein. Section 77 of the Law of Succession Laws of Kenya allows a Kenyan High court to authorize resealing of grants issued by foreign countries upon being satisfied that there is no estate duty outstanding nor any claim by a creditor. Accordingly, application herein is allowed as prayed in terms of prayer (a) of the originating summons dated 12<sup>th</sup> June, 2017 with orders that:

(a) The order confirming inheritance of the estate of Isaiyas Haile Michael Desta (deceased) issued to the applicant by the Communal Court of May Temenay P. Tsaserat Asmara in Eritrea on 7<sup>th</sup> December, 2016 be and is hereby resealed and accepted in the Republic of Kenya and same be issued by this court as an order made by a Kenyan Court.

(b) Applicant to bear his own costs.

Order accordingly.

DATED AND DELIVERED AT NAIROBI THIS 14<sup>TH</sup> DAY OF JULY, 2017.

J.N. ONYIEGO (JUDGE)

In the presence of:

..... Counsel for Applicant