



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO 545 OF 2014

IN THE MATTER OF THE ESTATE OF PETER MUETI MWISA (DECEASED)

JANE WANJA MUETI.....1ST PETITIONER/APPLICANT

MUTURI JOSEPH.....2ND PETITIONER/APPLICANT

VERSUS

DAFROZA SILVESTER DUTTU.....OBJECTOR/RESPONDENT

RULING

PLEADINGS

The deceased Peter Mueti Mwisa died on 14th January 2014 as per the attached death certificate No. 152639.

By an application filed on 5th March 2015 by the 1st applicant brought under **Section 45 of the Law of Succession Act and Rule 73 and 44(3) of the Probate and Administration Rules**; she sought from this Court the following orders;

a. The Court to issue interim, conservatory and preservatory orders over the deceased's estate

b) The Honorable Court to issue interim, conservatory and preservatory orders, conserving and preserving the estate of the deceased herein and also an order against one **DAFROZA SILVESTER DUTTU**, her servants, agents and/or employees and all those persons claiming under her be restrained from in any way interfering, disposing off, alienating, selling, charging and/or in any other manner intermeddling with the estate of the deceased and in particular;

b. L.R. No. 209/10544/7

c. L.R. No. 209/8292/24(House No. 23) Doonholm

d. L.R. No. 82/3330, Karen

e. L.R. No. 2259/428,

f. Kibera House No. 128 (2 units)

g. Mavoko Plot No. 1338/32

h. Mavoko Plot No. 1338/33

i. Mavoko Plot No. 1338/34

j. Mavoko Plot No. 1338/35

- k. Mavoko Plot No. 1338/36
- l. Barclays Bank Account No. [particulars withheld], Enterprise Road
- m. The Court to order accounts of rental income accrued from LR209/8292/24 House 23, proceeds of Barclays bank Account [particulars withheld] Enterprise Road Branch and Green Plots Properties Management Agency to provide the suit properties full statements of accounts.
- n. The Court to order the Respondent to make full disclosure of the assets, shares, money, properties that comprise of the deceased's estate.
- o. The Court to provide directions in this matter on the way forward in view of the objection to issuance of grant filed in Court by the Objector on 20th June 2014.

The Objector Respondent Filed A Replying Affidavit to the Application of 5th March 2015 on 18th March 2015. The Objector reiterated that the applicant Petitioner applied for letters of administration on 6th March 2014 and left her out as beneficiary or dependent to the deceased's estate. The Applicant included her children with the deceased without disclosing they are not her children.

The Respondent stated that properties LR 209/10554/7 & LR 209/8298/24 belonged jointly to her and the deceased as joint tenants. By virtue of **Section 60 of the Land Registration Act**, upon death of one of the joint tenants, then the property reverts to the surviving tenant. The above-named properties should not be part of the deceased's estate available for distribution.

The Respondent indicated that the Applicant collects rent from the Doonholm property LR 82/330; Kibera House no 28 and she lives in Karen LR2259/428. The Mavoko properties are undeveloped.

The Applicant receives spousal benefit from the United Nations where the deceased worked.

The Applicant filed a further affidavit of 20th March 2015; she deposed that she is the legal wife of the deceased as shown by the marriage certificate attached to the petition. The Respondent Objector is not a beneficiary to the deceased's estate. The registration of properties in joint tenants does not vitiate the beneficial interest. The preservatory orders are to protect the deceased's estate from waste.

The Respondent Objector filed an application under certificate of urgency on 21st April 2015 and she petitioned for special limited grant as dependents of the deceased.

As mother to the children of the deceased, she is incapable of paying school fees and school expenses for the minor children. She sought Ksh 1,166,700/- from the Deceased's Barclays bank Account [particulars withheld] Enterprise Road Branch.

She attached bank statement, children birth certificates, and fees structures for the years school fees for the children.

She outlined the beneficiaries and or dependents to the deceased's estate to include herself, 3 children of the deceased, sister and mother to the deceased. She also outlined the assets of the deceased.

The Applicant filed a Replying Affidavit objecting to the application for special limited grant on the following grounds;

- a. The Objector has not established her claim as beneficiary of the deceased's estate;
- b. The Applicant filed petition for grant of letters of administration and included the Respondent's children as beneficiaries to the deceased's estate;
- c. The Respondent runs the deceased's Company; AIRFLOW ENGINEERING COMPANY and uses the deceased's phone line with Mpesa Account.

d. The children's school fees have been paid.

On 28th September 2015, the parties attended Court; their respective learned Counsel put each party's claim to the Court. The Court found that in the absence of all beneficiaries written consents to allow this Court to intermeddle with the deceased's estate by ordering for payment of school fees pending the issuance of the grant; the special limited grant would not be granted.

The court was urged to then deliver Ruling on the application of the 1st Applicant on preservation of the deceased's estate and appointment of administrators.

BACKGROUND

The background to this matter is as follows;

The Petitioner Jane Wanja Mueti (widow) and Muturi Joseph (brother in-law) filed a petition for letters of Administration intestate on 7th March 2014. The Applicants' outlined beneficiaries as herself, and children of the deceased A W -14 years, F E- 10 years and A M 10 years and assets of the deceased's estate as outlined above and sought the grant of administration of the deceased's estate.

The Objector, Dafroza Silvester Duttu filed an objection to making of grant on 20th June, 2014 and the grounds of her objection are as follows;

1. The Objector is the second wife of the deceased
2. That 1st Petitioner and the deceased had separated by the time of his demise
3. The deceased lived with the Objector and their issues in South C prior to his demise
4. The children listed in the petition are the issues of the deceased's and Objector's union
5. The 1st Petitioner and the deceased did not sire any children together
6. The Petitioner's intention is to disinherit the Objector and her children
7. That the Petitioners conspired with the Assistant Chief, Lenana Sub-Location to mislead this Honorable Court about the jurisdiction and the beneficiaries of the deceased's estate.

SUBMISSIONS

The Objector, Dafroza Silvester Duttu filed submissions on 28th April 2015 and in a nutshell urged this Court to exclude the suit properties under joint tenants in her name and the deceased's name as envisaged in **Sections 90 & 91 of the Land Registration Act**. Secondly, no evidence has been advanced to show the Respondent has intermeddled with the deceased's estate to warrant the conservatory and preservative orders of the properties against her. Thirdly, the Court should appoint the Respondent and Applicant as joint administrators of the deceased's estate.

The Applicant filed submissions on 20th March 2015 and supported the Application of 5th March 2015 that the orders to preserve the estate are necessary to prevent the estate from waste. She is the lawful widow of the deceased and the Respondent based her claim on long cohabitation with the deceased.

EVALUATION

The Court outlined the chronology of events so as to underscore the fact that this is not a matter to be determined on the basis of pleadings without *interpartes* hearing and *viva voce* evidence.

The Petitioner filed the petition and states she is the deceased's legal wife and now widow. They did not have children. The Respondent filed objection to issuance of the grant and states that she lived with the deceased from 2002 to his demise and they had 3 children.

Section 69 and 70 of the Law of Succession Act mandates that where an objection to the application for grant is filed and an answer or cross petition is filed, the Court shall proceed to determine the dispute by

examining any applicant on oath of affirmation, or call further evidence where there is a will or issue a special citation. So the objection raised by the Objector Respondent shall be heard first and determined. This shall result in appointment of administrator(s).

The matter as depicted by the pleadings filed is acrimonious and ought to be heard *interpartes* on the following issues;

- a. Is the Applicant or Respondent wife /widow of the deceased under **Section 3(5) of the Law of Succession Act**?
- b. Who shall be appointed administrator(s) of the deceased's estate under **Section 66 of the Law of Succession Act**?
- c. Who are beneficiaries and or dependents of the deceased under **Section 29 of the Law of Succession Act Cap 160**
- d. What properties constitute of the deceased's estate that shall be available for distribution to the beneficiaries

FINAL ORDERS

In the intervening period; this Court orders as follows;

1. Interim, conservatory and preservatory orders, conserving and preserving the estate of the deceased herein to both the Applicant and Respondent their servants, agents and/or employees and all those persons claiming under them be restrained from in any way interfering, disposing off, alienating, selling, charging and/or in any other manner intermeddling with the estate of the deceased and in particular;
 - a. L.R. No. 209/10544/7
 - b. L.R. No. 209/8292/24(House No. 23) Doonholm
 - c. L.R. No. 82/3330, Karen
 - d. L.R. No. 2259/428,
 - e. Kibera House No. 128 (2 units)
 - f. Mavoko Plot No. 1338/32
 - g. Mavoko Plot No. 1338/33
 - h. Mavoko Plot No. 1338/34
 - i. Mavoko Plot No. 138/35
 - j. Mavoko Plot No. 1338/36
 - k. Barclays Bank Account No. [particulars withheld], Enterprise Road
2. The Applicant shall hold the properties she has and the Respondent shall hold the properties she has and the status quo shall be maintained until hearing *interpartes* to determine the beneficiaries and or dependents to the deceased's estate and the properties that comprise the deceased's estate available for distribution.
3. The parties shall obtain a hearing date in the Registry.
4. Each party is at liberty to apply.
5. Each party to bear its own costs.

DELIVERED AND SIGNED IN OPEN COURT AT NAIROBI THIS 8TH DAY OF FEBRUARY, 2016

M.W. MUIGAI

JUDGE

In the presence of: