



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 952 OF 2015

IN THE MATTER OF THE ESTATE OF GODFREY OMARANA NYABIRA (DECEASED)

CATHERINE KANORIO RUTERE.....APPLICANT

VERSUS

CHEMUTAI DAMARIS.....RESPONDENT

RULING

1. The deceased Godfrey Omarana Nyabira died intestate on 9th July 2014 at Nairobi. On 20th April 2015 his widow Catherine Kanorio Rutere (the applicant) and cousin Anzelim Ekeya Okitwi petitioned this court for the grant of letters of administration intestate. In the affidavit in support of the petition it was stated that the deceased had left another widow Chemutai Damaris (the respondent) and, in total, five children who were minors.

2. Before the petition was heard, the applicant filed the present application seeking that the respondent be called upon to show cause why she should not be appointed to be a joint administrator of the estate, to give account of the properties of the estate and, in the meantime, be stopped from intermeddling in the estate of the deceased. The applicant swore that she had requested the respondent to join her to petition for the grant of letters of administration but that she had declined, and yet she was a wife to the deceased. Further, that the respondent had sold the deceased's vehicle, withdrawn money from the deceased's account and intended to sell the deceased's land. In the application she had also sought to be provided for to pay fees for her children, and alleged that the respondent had denied her this request. She sought that a restraining order do issue to stop the respondent from transferring, wasting, selling and or intermeddling in the estate.

3. The respondent swore a replying affidavit to state that, although the deceased had married the applicant in 1991, he had divorced her in 2009 and had left an affidavit ("DC1") sworn on 20th March 2013 to this effect. She admitted that the deceased and the applicant left two children, but that following the divorce the two had signed a parental responsibility agreement ("DC3") in which each parent took one child. The respondent was left to bring up the child left with the deceased. As for the alleged intermeddling, the respondent denied that she had sold the vehicle. She stated that the vehicle and its logbook ("DC2") were at her house. She denied that she intended to sell any land belonging to the deceased. As for fees, she stated that the applicant had accessed insurance money that the deceased had left for fees. The applicant admitted in the further affidavit that she had indeed accessed the money for fees.

4. The applicant denied that the deceased had divorced her, and was surprised to see the affidavit which, in any case, was not evidence of divorce. She stated that there was a time during their marriage that there was marital disagreement. That was when the parental responsibility agreement was signed. She denied that this had led to divorce. She laid claim to Ngong/Ngong/36974 which she said the deceased bought while they were living together. She stated that the deceased had left two vehicles but that she had seen only one in the respondent's compound.

5. The question that this court will ultimately decide is whether the deceased was still married to the applicant or had divorced her at the time of the marriage. There is no dispute that he had two children with her, and had another family that comprised the respondent and three children.

6. The allegations that the respondent had sold the deceased's vehicle, had threatened to sell his land or had withdrawn monies from the deceased's account were not, in my view, substantiated, or proved. There is, therefore, no basis to grant any restraining order. The applicant had, admittedly, accessed fees for her children from the insurance policies left by the deceased.

7. Because the deceased had children with the applicant, and the respondent and her children are certainly beneficiaries of the estate, and in order to expedite this matter, I issue a joint grant of letters of administration intestate to both the applicant and the respondent. I ask that both of them, or either of them, shall within 45 days bring an application for confirmation of the grant. It is before that confirmation that the court shall receive oral evidence, and each side allowed to call witnesses, to determine whether the deceased and the applicant were or were not divorced.

8. To that extent, therefore, the application dated 23rd October 2015 by the applicant is allowed. I ask that costs do abide the cause.

DATED and SIGNED at NAIROBI this 13th day of SEPTEMBER 2016.

A.O. MUCHELULE

JUDGE

DELIVERED AND SIGNED this 14TH day of SEPTEMBER 2016.

W. MUSYOKA

JUDGE