



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO.2524 OF 2010

IN THE ESTATE OF NJOROGE NJABI ALIAS PETER NJOROGE NJABI (DECEASED)

ESTHER RUGURU NJOROGE 1ST APPLICANT

JAMES NJUGUNA NJOROGE 2ND APPLICANT

VERSUS

JOSEPHINE NYAKERU NJOROGE RESPONDENT

RULING

1. Esther Ruguru Njoroge and James Njuguna Njoroge, the two applicants herein, obtained in this Succession Cause on 20th December 2010 a limited Grant of Letters of Administration ad litem in the estate of Njoroge Njabi alias Peter Njoroge Njabi deceased. On 7th August 2012, they made an application by way of summons of even date seeking orders that this succession cause be consolidated with Succession Cause No.2578 of 2010 relating to the estate of the same deceased, namely Njoroge Njabi also known Peter Njoroge Njabi. They also sought orders that Josephine Nyakeru Njoroge, the respondent, be compelled to surrender alleged two counterfeits of original will of the deceased for examination by the Government Forensic Officer and scrutiny of the thumb print impression thereon endorsed. An injunctive order is also sought to restrain the respondent from “intermeddling, alienating or disposing of the estate of the deceased until the application is heard and determined.”
2. The application shows that the respondent has on her part also filed succession cause No.2578 of 2010.
3. In her affidavit sworn on 2nd August 2012 in support of the application before me, Esther Ruguru Njoroge, the 1st applicant, on her own behalf and on behalf of the second applicant, depones that she is an heir to the estate of the deceased but does not disclose in the affidavit the basis of her right to inherit.
4. Josephine Nyakeru Njoroge, the respondent, filed on 16th October 2012 a replying affidavit to the application and attacked the propriety of the applicants’ application and the orders prayed for. She contends that there is no merit in the application. Not unlike the applicants, the respondent too does not make as much as a whimper in her affidavit about her relationship with the deceased.
5. I have taken the liberty of perusing the court file in Succession Cause No.2578 of 2010.

6. It shows that the deceased died at Kihara S.D. Hospital on 24th July 2010. The deceased's area chief has stated that the deceased was survived by a widow, Esther Ruguru Njoroge (the 1st applicant) and seven children whose ages range from 32 years to 46 years. James Njuguna Njoroge, the 2nd applicant is the 3rd born child of the deceased. The estate of the deceased comprises parcels of land numbers Kiambaa/Ruaka/396; LTK/Lolarash/Olgululu/271; LTD/Lolarash/Olgulu/270; Kiambaa/Ruaka/T.137; Githunguri/Githiga/1160; Olarash/Olgulula/272.

7. The two applicants applied in Cause No.2578 of 2010 for a Grant of Letters of Administration intestate. However, on 25th January 2011, the respondent lodged a caveat. All the children of the deceased have consented to the letters of administration intestate being issued to their sibling, James Njuguna Njoroge and their mother, Esther Ruguru Njoroge, the two applicants herein.

8. The respondent claims that the deceased left a written Will in which she (the respondent) was appointed the Executrix. The document brought to the attention of the Court by the applicants shows that the respondent is a niece of the deceased. The purported Will has bequeathed the deceased's entire estate to Margaret Wamuhu Njabi and Josephine Nyakeru Njoroge, the sister and niece of the deceased respectively and it makes no mention of the widow and the children of the deceased who are his lineal descendants.

9. When the application came up for hearing before me, Mrs. Kanyiri, the learned counsel for the applicants told the court that the widow and the children of the deceased who are all grown men and women disputed the validity of the deceased's alleged Will which is written in English and does not show that it was read or translated to the deceased before he signed by placing his thumb print on it. Moreover, said counsel, the person who witnessed the "signature" (i.e. thumbprint) of the deceased was a Mr. J. K. Kamonde, counsel appearing in the succession cause for the respondent and a pupil carrying the name of Joy Kendi Kubai of P. O. Box 91, Maua. Though shown to have been signed on 2nd October 2008, it bore no certificate or other literature to show that the deceased knew what he was doing or that he was signing a Will or what it provided.

10. To enable the Court to effectively deal with the dispute in this estate, the orders sought will not be granted as that will only serve to escalate the dispute. Instead, and in pursuance with the provisions of Section 47 of the law of Succession Act, Cap 160, and Rule 73 of the Probate and Administration Rules, the court makes orders that:-

(1) The deceased's widow, Esther Ruguru Njoroge, and her son James Njuguna Njoroge, on their own behalf and on behalf of the other six children of the deceased shall appear through their advocate on record together with the respondent and/or her advocate before a Judge in the Family Division on a date to be given by the court registry for the purpose of taking directions on both causes with regard to the petition for letters of administration and the purported Will of the deceased.

(2) The applicants shall be treated as the petitioners and the respondent as the objector.

(3) In the interim period, on the basis of the Limited Grant ad litem made to the applicants pursuant to Section 54 of the Law of Succession Act the applicants shall be entitled to gather and conserve the deceased's estate.

(4) The respondent shall not intermeddle with the estate and the purported will, and unless or until it is proved, it shall have no effect.

(5) The application by the applicants which is the subject of this ruling is allowed only to the extent of prayer 4 of the summons.

G.B.M. KARIUKI, SC

JUDGE

Delivered at Milimani Law Courts, Nairobi, on this 6th day of February 2015 by the Honourable Justice W. Musyoka on behalf of Justice G.B.M. Kariuki.

JUDGE

COUNSEL APPEARING

Ms G. G. Kanyiri & Co. Advocates for the applicant

Mr. Charagu advocate, for Mr. G. Kamonde, of G. Kamonde & Co. Advocates for the respondent

Court clerk – Mr. Wahinya Kugwa