



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NO. 59 OF 2014

**IN THE MATTER OF THE ESTATE OF ARTHUR NGANGA NJUGUNA NDORO
(DECEASED)**

JOYCE MBAIRE NDORO.....PETITIONER/APPLICANT

RULING

1. The Petitioner Joyce Mbaire Ndoro is the 1st wife of the deceased Arthur Nganga Njuguna who died on the 23rd February, 2014. He was survived by six children and the Petitioner as stated in her summons and petition for Letters of Administration Ad Colligenda Bona dated the 13th March, 2014.

She seeks to be issued with a limited grant ad colligenda bona in respect of the deceased estate relating to Bank accounts held at the Equity Bank, Kenyatta Avenue Branch and Housing Finance Corporation of Kenya (HFCK), Nakuru Branch and properties described as LR No. 9348, LR 9350 and LR 9215 pending the hearing and determination of the substantive Succession Cause, not yet filed.

2. At the time of filing this Petition on the 13th March 2014, the death certificate in respect of the deceased was not available. On the 16th May, 2014 this court granted leave to the Petitioner to file a further affidavit. The court records show that the further affidavit has not been filed to date. The application was brought to court under certificate of urgency, and the reasons given were that the properties subject of the application may fall into wastage, and that the applicant was apprehensive that opportunists may take advantage of the demise of the deceased and invade the land parcels as there was no manager in place, and that there were businesses left behind that required supervision including payment of salaries for staff.

3. In her affidavit in support of the application, the Petitioner did not disclose that the deceased had a second family of a wife, one Magdaline Wambui Ndoro, now deceased, in May 2007 and two children from the said second marriage, namely PMN and R M (*adopted daughter*) now 17 years old and in college.

Further, the court notes that the deceased was survived by six adult children, but the Petitioner opted to petition the court alone. No reasons have been advanced.

4. The application is opposed by one Alfred M. Njuguna Ndoro the eldest brother of the deceased, and the deceased daughters P M and RM who have filed separate affidavits in opposition. It is stated that the Petitioner lives in the deceased's property LR 9348 while the second family lives on property LR No. 9350 where the deceased, prior to his death, used to live with the two daughters, as it is alleged that the Petitioner had separated with the deceased prior to his death, and only came back to the family after the deceased died.

5. It is the respondents averments that the application is brought to court in bad faith and for purposes of the petitioner, administering the estate of the deceased without due process being followed, with a view to disinheriting the 2nd family which she never acknowledged as evidenced in omissions during the preparation and burial of the deceased where the 2nd family was not involved nor their names included in the burial programmes or acknowledged at all.

6. This court has considered the Petition, the supporting affidavit and also the replying affidavit and annexures thereto, and submissions by counsel for the Petitioner and the Respondents.

The application is brought under the provisions of Rule 59(3) and 49 of the Probate and Administration rules while the Petition is brought under Section 67 of the Law of Succession Act, Chapter 160, Laws of Kenya.

Rule 36 of the Probate and Administration rules reads,

“where owing to special circumstances the urgency of the matter is so great that it would not be possible for the court to make a full grant of representation to the person who would by law be entitled thereto in sufficient time to meet the necessities of the case, any person may apply to the court for the making of a grant of administration ad colligenda bona defuncti of the estate of the deceased.”

7. The purpose for a grant of letters of administration ad colligenda bona is to collect the property of the deceased where it is of perishable or precarious nature and where regular probate and administration cannot be granted at once. This was held in the case of ***Morjaria -vs- Abdalla (1984) KLR 490.8***. The Applicant to succeed in such an application, he ought to satisfy the court of the urgency and special circumstances pertaining to the matter.

The applicant here has urged the court that the deceased owned a school where he was the sole manager and in whose names the school Bank accounts were held, and the need to have the school operations continue. In addition the deceased farms LR No. 9348, 9350 and 9215 were at risk of being invaded as no one was authorised to look after them including tending the crops. In granting a limited grant, the court in ***Re Elijah Dolfus Nyaseme, deceased (2013) KLR***, the court reasoned out that it would facilitate the running of the deceased's businesses and meeting obligations of the business. For the above purposes, it would be just and fair to grant the prayers.

9. However, in this present matter, the deceased's brothers and children of the second marriage (*house*) as stated above have raised serious objections, and this court is obligated to address itself to their concerns.

The respondents contend that the nature of business left behind, a school is in no danger of perishing nor are the farms. The petitioner is said to be living in one of the farms LR. No. 9348 while the children of the 2nd marriage (*house*) live in the other farm LR 9350 (*used to live with the deceased before his demise*) hence none is in danger of being invaded. It is alleged that all what the petitioner seeks is to be allowed to administer the estate alone to the exclusion of all those legally entitled to apply and to exclude the lawful beneficiaries including the two daughters from the second family whereof it has been alleged that she has cut off all financial support to them towards food, power, school fees, house help, among other needs. This is more evident in that the Petitioner during the funeral arrangements of the deceased she refused to recognise the 2nd family including the deceased 2nd wife and her two daughters – both in funeral notices, newspapers and programmes.

10. As to the bank accounts in the names of the deceased, it ought to be noted that there is no property in a business name, more so if it is a sole proprietorship as it enjoys no perpetual succession. The proceeds in the bank accounts belong to the deceased and form part of the estate, not the school. A party holding Letters of Administration ad colligenda bona can not be authorised to access the funds as the grant is limited. For the school business, the applicant or any of the other beneficiaries may change particulars of the business name and open and run new bank accounts for the use and running of the said school. Only after a full grant of letters of administration has been issued and confirmed can the administrators have

full access and distribution of the funds in the said accounts.

11. Taking into account the observations and issues raised by both parties, I find serious and weighty issues that can only be adequately canvassed, not in an application for a limited grant, but in a full application for grant where the beneficiaries or the persons entitled to a grant as provided for in the Act may be at liberty to raise their concerns and objections, if any, during the full hearing.

12. I find that the applicant has not satisfied the court on the special circumstances or urgency of the matter. As stated above, none of the properties stated have been shown to be in danger of being wasted or invaded by anybody. The school business may change particulars at the Registrar of Companies and open new bank accounts for the operations and running of the school pending a full application for grant and confirmation of letters of administration.

13. The upshot of the above observations and considerations is that the application is unmerited, and is hereby dismissed. Any of the parties entitled to apply for grant of letters of administration for the estate of the deceased may move the court in that regard.

Costs of the application shall be costs in the cause.

Dated, signed and delivered at Nakuru this 6th day of February, 2015

JANET MULWA

JUDGE

Ruling read in open court in the presence of:

Gatonye for Petitioner

Ms. Ombima holding brief for Mutonyi for Respondent

Court clerk: Mwai