

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1966 OF 2012

IN THE MATTER OF THE ESTATE OF S H D (DECEASED)

N D.....APPLICANT

VERSUS

N S I.....1ST RESPONDENT

A H.....2ND RESPONDENT

RULING

1. The deceased S H D died on 30th July 2011. On 29th August 2012 the respondents filed petition to be granted letters of administration intestate. In the affidavit sworn in support, the 1st respondent said she was the deceased's wife and the 2nd respondent was the deceased's son. The grant was issued on 28th January 2013 and confirmed on 13th November 2013. On 21st January 2015 the applicant filed this summons for the revocation and/or annulment of the grant on the basis that she was the widow of the deceased and yet the filing of the petition, and all consequent events, had not been brought to her attention. Her case was that the 1st respondent was not the deceased's wife but employee in a company that was being managed by him, and that the 2nd respondent was not the deceased's son but the 1st respondent's adopted son. She swore that following the deceased's death she had successfully been granted probate of written will by the High Court of Justice in England on 29th December 2011 which was resealed in the High Court of Kenya by order dated 23rd November 2012.
2. In the summons she sought preservative orders against any dealings in respect of the deceased's property known as SIPILI/DONYOLOIP/BLOCK [*particulars withheld*] and dealings in shares of the deceased in [*particulars withheld*] INSURANCE COMPANY LTD. This was pending the hearing and determination of the application for revocation and/or annulment of the grant. The application was served but did not elicit any response.
3. **Rule 73** of the **Probate and Administration Rules** saves the inherent powers of the Court to prevent abuse of the court process and to meet the ends of justice. It is evident that in respect of the deceased there is grant of probate of written will issued by the High Court of justice in England and resealed in this Court. That is, on the face, a demonstration that the deceased left a will. The sole executrix and beneficiary of the will is the applicant. Before this court was filed a petition by the respondents alleging that the deceased died intestate. There is a confirmed grant, which means the respondents now own the deceased's property and may use and/or dispose it. This property, in my view, should be protected and preserved until the application is heard and determined.
4. These are the reasons why I allow the application in its prayers 2, 3 and 4. Costs shall await the resolution of the summons.

DATED and DELIVERED at NAIROBI this 4th day of March 2015

A.O. MUCHELULE

JUDGE