



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
SUCCESSION CAUSE NO.885 OF 2013
IN THE MATTER OF MARGARET NANDWA OCHANJI ..DECEASED

C C O.....PETITIONER/RESPONDENTS

M O M

VERSUS

J I O.....APPLICANT

R U L I N G

The Application

1. By the Chamber Summons dated 15/06/2015, the applicant herein, J I O is asking this Honourable Court for ORDERS:-

- i) THAT this application be certified as urgent and be heard exparte in the 1st instance.
- ii) THAT pending the hearing of this application the 1st respondent be restrained by an order of this Honourable court from obtaining any money from the Public Trustee offices using the Grant of Letters of Administration intestate issued to him on 18th February 2014.
- iii) THAT this Honourable court be pleased to issue an order that the money obtained by the 1st Respondent from Public trustee in the sum of kshs.100,000/= be deemed as part of the Respondent's share on distribution.
- iv) THAT this honourable court be pleased to issue an order that the share on distribution for the minors J P O and B W be given to the Applicant herein who is the guardian of the aforesaid minors.
- v) THAT costs of this application be in the cause.

2. The application is further supported by the applicant's sworn affidavit dated 15/06/2015 in which she depones that the 1st Respondent herein, C C O, is misusing the money that is due to the deceased's estate from the Public Trustee. She also avers that she is the mother of M N O deceased, and further that upon the death of the deceased, she took charge of the deceased's children J P O and B W. She relied on the letter dated 14/05/2015 from the Chief, Lubani location. In the said letter, Assistant Chief Benard A. Rapando says that the applicant in this case has custody and care of the two children and that no further

payments from the Public Trustee should be made to the 1st Respondent.

The 1st Respondent's Response

3. The 1st Respondent swore a Replying Affidavit dated 29/06/2015 opposing the application. He depones therein, inter alia, that:-

- He is husband of the deceased having married her under Luhya customary law.
- He had one child with the deceased during their 3-year marriage, namely F O as per the annexed certificate of Birth.
- He knows of only three children begat by the deceased.
- The deceased had nominated him as her next of kin.
- J P O is not a child of the deceased.
- The child known as N O, who was previously in his custody was taken away from him by the applicant.
- B W does not live with the applicant but with his father.
- He has received no money whatsoever from the Public Trustee and that there is no evidence whatsoever to suggest that he will misuse the money once it is paid to him by the Public Trustee.
- No agreement was ever reached at the family meeting on how to distribute the deceased's payments from the Public Trustee.

4. The 1st Respondent who wants the application dismissed has produced documents to show that F O was born to the deceased and the 1st Respondent on 19/07/2012. (see Annexure "EL4"); that B W is the son to one M M W") holder of National identity card No. [particulars withheld] (annexture EL 3) and that the said B W aged 13 years, is a standard six pupil at [particulars withheld], Navakholo (annexture EL4). There is also a birth certificate number [particulars withheld] showing that M M W is the father of B W (annexture EL 8)

Background

5. The deceased in this case died on 16/04/2013 from asthma. She was aged 37 years and was a teacher by profession. On 29/11/2013 the 1st Respondent together with the 2nd Respondent, M O M filed the petition herein. It was stated at paragraph 4 of Form P & A 5 that the deceased was survived by the following:-

- a. C C O – widower
- b. F O – son – 9 months (minor)
- c. B W – son – 10 years (minor)
- d. N O – son – 6 years (minor)

6. The Grant of Letters of Administration Intestate was issued to the Respondents on 18/02/2014. On 11/11/2014, the Petitioners filed application for Confirmation of Grant. Form 9 gives the same particulars of the deceased's beneficiaries, who include B W. Under paragraph 5 of Form 9, the Petitioners have

proposed distribution of the deceased's estate as follows:-

- a. C C O - widow - 200,000/=
- b. F O - son - 127000/=
- c. B W - son - 127000/=
- d. N O - son - 127000/=

7. It is to be noted that in all the P & A forms there is no mention of a child of the deceased by the name J P O, although the applicant provided a Certificate of Birth DNo. [particulars withheld] dated 08/06/2015 showing that the child J P O was born to the deceased on 29/09/2007 at Mathare North in Nairobi. The father's name is not given.

Analysis and Findings

8. I now return to the application. Regarding prayer 2 of the application. I do not find the evidence to support the allegation that the 1st respondent has already pocketed kshs.100,000/= from the Public Trustee. What is clear however is that by the time of her death, the deceased had four children, albeit from different fathers. All these children in my humble view are beneficiaries of the deceased's estate. This therefore means that the child J P O ought to be provided for during confirmation of grant. I do not think that the shares of the minor children should go to the applicant in full, for that would not be in the best interests of the children.

9. In effect therefore, I do not find any basis in the applicant's chamber summons dated 15/06/2015 and I dismiss the same.

10. Having said the above, I reiterate my earlier statement that all the deceased's four children must be provided for during confirmation. The Court will make appropriate orders for investment of the childrens' shares when the time comes to do so. The 1st Respondent shall proceed to make the necessary provision in the application for confirmation.

It is so ordered.

Ruling delivered, dated and signed in open Court at Kakamega this 14th day of July 2015.

RUTH N. SITATI

JUDGE

In the presence of:

Present in person for Appellant/Applicant

Present in person for Respondent

Lagat Court Assistant