



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
PROBATE AND ADMINISTRATION DIVISION
SUCCESSION CAUSE NO. 2312 OF 2015
IN THE MATTER OF THE ESTATE OF MARY WANJIRU KARANJA (DECEASED)
SYLVESTER KARANJA WANJIRUPETITIONER/APPLICANT

RULING

1. On 17th September 2015 the Petitioner/Applicant Sylvester Karanja Wanjiru (hereinafter Applicant), petitioned for grant of Letters of Administration intestate for the Estate of Mary Wanjiru Karanja who died on 30th May 2015. Contemporaneously with the petition he filed the application dated 15th September 2015 brought under **Section 71(4), 29, 32, 38 and 47** of the **Law of Succession Act**. In it the Applicant seeks orders of court that:

1. The grant of Letters of Administration intestate in respect of the estate of Mary Wanjiru Karanja be issued forthwith to the Applicant herein.
2. The said Grant of Letters of Administration Intestate be confirmed forthwith under the provisions of Section 71(4) of the law of Succession Act.
3. In the alternative, the court be pleased to authorize the Applicant to dispose of L.R. No. 36/VII/1011, one of the Assets belonging to the deceased in order to pay off the bank;

2. The grounds upon which the application is brought are that the deceased herein, died at Kenyatta National Hospital on 30th May, 2015 leaving the Applicant as the only sole beneficiary of her Estate; that there are no Dependants of the deceased as defined in Section 29 of the law of Succession Act and there is no surviving spouse as the deceased was not married. The Applicant stated that one of the Assets of the deceased, namely L.R. No. 36/VII/1011 situated in Eastleigh, Nairobi is under threat of being auctioned by a bank and that the interests of justice would justify that the Grant of Letters of Administration Intestate be issued and confirmed forthwith.

3. The application is supported by the affidavit of the Applicant sworn on 15th September 2015, in which he deposed that the deceased herein was his mother who died at Kenyatta National Hospital on the 30th May, 2015. He attached a true copy of Death Certificate No.0313257 marked “SKW – 1”. He also deposed that he was the only child of the deceased and the only beneficiary of the deceased’s Estate. Further that the deceased was not married hence there is no surviving spouse.

4. The Applicant exhibited the following documents:-

1. Letter from the Chief, Ruthanji Location, Mukurwe-ini-Sub- County, Nyeri County dated 20th

- July, 2015 and marked “SKW -3”; - from where the deceased hailed.
2. Letter from the Deputy County Commissioner, Mukurwe-ini Sub-County, Nyeri County dated 22nd July, 2015 and marked “SKW - 4”;
 - c. Letter from the Chief, Eastleigh South Location, Nairobi County dated 31st July, 2015 and marked “SKW - 5”. – where the deceased lived.

As proof that there are no other Dependants of the Estate of the deceased.

5. The Applicant averred that during her working life the deceased acquired the following properties:-

- i. L.R. No. 36/III/174 Eastleigh, Nairobi;
- ii. L.R. No. 36/VII/1011 Eastleigh, Nairobi;
- iii. L.R. No. 209/7383/302 Kimathi Estate, Nairobi;
- iv. Plot No. 62 C out of L.R. No. 6845/89 Embakasi, Nairobi
- v. Plot No. C55 out of L.R. No. 6845/89 Embakasi, Nairobi
- vi. Plot No. 13 out of L.R. No. 6845/153 Embakasi, Nairobi
- vii. Plot No. Nairobi Block 118/1535 Drumvale Corp. Soc

He attached supporting documents of the above properties to his petition and asserted that the deceased also operated a number of bank accounts, as indicated on the list of Assets contained in his Affidavit in support of the petition.

6. The Applicant went on to state that in or about August, 2010 the deceased borrowed a sum of Kshs.26,000,000/= from the Co-operative bank of Kenya Limited, which she secured with her Title for L.R. No.36/VII/1011. That around the month of October 2010 the deceased suffered a stroke and was confined to a wheelchair but continued to honour her obligations to the bank albeit at tremendous sacrifice.

7. The Applicant also stated that since his mother’s death, he has been finding it extremely difficult to keep up with the loan repayments as the bank loan continued to attract interest and penalties. That he has since made one payment of Kshs.400,000/- into the deceased’s loan Account No. 01109111678700, held by the Co-operative Bank of Kenya Limited. He attached a receipt of the payment. That the loan as of 7th September, 2015 stood at Kshs.22,385,438.95 and continues to rise.

8. The Applicant therefore urged the court to issue the grant of letters of Administration intestate and have them confirmed forthwith. The application is *exparte* and is therefore not contested.

9. I have perused the petition and the application together with the supporting affidavit and annexures thereto. The urgency in the circumstances of this cause as stated is that the deceased took a loan with a bank and used one of her assets being L.R. No. 36/VII/1011 as collateral. Upon her demise the Applicant who is said to be her only child and beneficiary of her Estate has been unable to keep up with the repayment of the loan and now the asset used as collateral is in danger of being auctioned by the bank.

10. A letter from the chief of Eastleigh South location where the deceased lived in Nairobi and another from Deputy County Commissioner Mukurwe-ini sub County confirm that the deceased left behind only one beneficiary being the Applicant herein.

11. The demand letter that provoked this application was annexed and is marked “S.K.W.7”. It is dated 7th September 2015 and is from the Branch Manager Co-operative Bank of Kenya Ltd Kayole Branch. In the letter the Bank threatened to commence the exercise of its legal rights of recovery in accordance with the Agreement without further reference to the addressee of the later.

12. Needless to state the addressee had long been dead by the time of instituting the demand notice. The Applicant has not shown the court that the bank has taken any further step since that letter was written. In

any case the bank should be notified of the demise of the deceased as it would be required to address its demands to the legal representative of the Estate of the deceased. Otherwise it will be hard pressed to prove service on a dead defaulter.

13. Learned counsel Mr. Gachomba, in his oral submissions urged the court to allow the application for the foregoing reasons. He asserted that **Section 71(4) of the Law of Succession Act** gives this court special powers to dispense with gazettelement of an application.

14. Indeed **Section 71(4) Law of Succession Act** provides as follows:

“(4) Notwithstanding the provisions of this section and sections 72 and 73, where an applicant files, at the same time as the petition, summons for the immediate issue of a confirmed grant of representation the court may, if it is satisfied that-

- a. **there is no dependant, as defined by section 29, of the deceased other than the petitioner;**
- b. **no estate duty is payable in respect of the estate; and**
- c. **it is just and equitable in all circumstances of the case, immediately issue a confirmed grant of representation.**

Considering the wording of this section and where it is situated in the act, it would appear that it provides for procedures to be followed at the confirmation stage after the grant has been issued.

15. The court has no way of ascertaining the conditions set out in (a), (b) and (c) of **Section 71 (4) Law of Succession Act** hence the need to publish a notice of the application inviting objections thereto, to be made known to the court within a specified period. It is to be noted that the subsection (4) in its preamble states that **“Notwithstanding the provisions of this section and sections 72 and 73,....”** If the legislature had intended to circumscribe the provisions of **Section 67(1) Law of Succession Act**, nothing would have been easier than for them to include it in the preamble to **Section 71(4) Law of Succession Act**. The wording of **Section 67(1)** which is couched in mandatory terms reads as follows:

“No grant of representation, other than a limited grant for collection and preservation of assets, shall be made until there has been published notice of the application for the grant, inviting objections thereto to be made known to the court within a specified period of not less than thirty days from the date of publication, and the period so specified has expired.”

The wording of this section does not seem to provide room for a grant to be issued without a notice of the application of grant being published except as provided in the said section.

16. In view of the foregoing I decline to grant the orders sought and order that Notice of the application for grant be published forthwith, if the documentation thereof is in order. Such publication will pave way for the Applicant to apply to court for the confirmation of grant before the expiration of six months if he so wishes.

SIGNED DATED and DELIVERED in open court this 12th day of October 2015.

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L. A. ACHODE

JUDGE