



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 729 OF 2014

IN THE MATTER OF THE ESTATE OF VINCENT AMUNGA WABUYABO...DECEASED

AND

**IN THE MATTER OF AN APPLICATION FOR REVOCATION AND OR ANNULMENT OF
GRANT BY LILIAN ANYANGO GODIA**

VERSUS

THE PUBLIC TRUSTEE.....PETITIONER

RULING

1. The deceased herein VINCENT AMUNGA WABUYABO died intestate on the 18.03.2012. Grant of letters of Administration Intestate of all his estate were granted by this court on the 1.10.2014 to the PUBLIC TRUSTEE KAKAMEGA who undertook faithfully to administer the estate according to law and to render a just and true account whenever required.

2. By an application dated 21.10.2014 brought pursuant to Sections 47 and 76 of the Law of Succession Act and Rules 44(1) and 73 of the Probate and Administration Rules, the objector/applicant LILIAN ANYANGO GODIA prays for ORDERS;-

a) spent

b) That the Grant of Letters of Administration intestate issued on the 1st October, 2014 be revoked and/or annulled.

c) That the applicant herein be included as a beneficiary of the estate of the deceased VINCENT AMUNGA WABUYABO

d). That an order do issue restraining and/or stopping the petitioner/respondent their agents, assignees and/or servants from intermeddling, distributing or from dealing in any way with the benefits of the deceased pending the hearing and determination of this application inter-parties and the hearing of the main cause.

e) That costs of this application be provided for.

3. The application is premised on the grounds that the said grant was obtained fraudulently by concealment from the court of the true beneficiaries and dependants of the deceased's estate and more particularly the applicant who is the legal and 1st wife and beneficiary of the deceased's estate. Secondly

that consents to the making of a grant of Letters of Administration Intestate to person of equal or lesser priority was not obtained from all the *bonafide* beneficiaries to that estate of the late VINCENT AMUNGA WABUYABO. Further that the proceedings to obtain Grant of Letters of Administration for the deceased's estate benefits are defective in substance and a nullity. It is also alleged that the petitioner/respondent wants to disinherit the applicant from the estate of the deceased. Lastly that the grant of representation was made secretly despite the fact that it was gazetted.

4. In her supporting affidavit the applicant claims of be the 1st widow to the deceased having been married under the Luhya Customary Law thus making her a rightful beneficiary to the deceased's estate see annexure "LAG1". She claims to have been omitted as a beneficiary in this succession cause. She has produced a letter by the Chief Shianda Location dated 14.4.2014 annexure "LAG3" which lists the rightful beneficiaries of the deceased's estate. She also makes mention of the Insurance Policy No. 300/001/1079 with CIC Assurance Ltd where she is listed as beneficiary and as a wife see "LAG 4". She also mentioned the National Hospital Insurance Fund (NHIF) where she claims the deceased included her name as his spouse see "LAG 5". She depones that during the subsistence of their marriage with the deceased they were blessed with one issue WHITNEY ADIKINYI AMUNGA whose copy of birth certificate is annexed and marked 'LAG6'

5. The applicant lists the following as the Dependants/Beneficiaries of the deceased's estate;-

- a) LILIAN ANYANGO GODIA.....1ST WIDOW
- b) ROSELINE NASIMIYU.....2ND WIDOW
- c) WHITNEY ADIKINYI.....DAUGHTER
- d) GRACE NALIKA.....DAUGHTER
- e) VICTOR WABUYABO.....SON

She maintains that the petitioner did not act in good faith as they failed to give a full and true inventory of the beneficiaries of the deceased estate. She wants the grant revoked and/or annulled.

6. The application is opposed. There is on record a replying sworn affidavit by JAMES K.KENDUIYOWOH the Assistant Public Trustee of the Republic of Kenya sworn on the 23.10.2014. In the affidavit he explains that he received the last salary of the deceased from the Teachers Service Commission and death gratuity from the National Treasury Nairobi which are shown as annexures "JK1" and 'JK2' On the 29th November, 2012 ROSELYNE N. MAKHANU widow of the deceased filled Pt Form 1 issued at the Public Trustee's office giving detailed information on the estate of the deceased see annexure marked "JK3". On the same date the widow to the deceased issued the public trustee with consent to the making of grant marked 'JK4'. A list of heirs was also received from the Deputy County Commissioner Mumias Sub-County on the 15.4.2014 see annexure "JK5" for the said list. The deponent says that The Public Trustee acting on information from the widow to the deceased that the objector/applicant had remarried, wrote to the Deputy County Commissioner on the 29.4.2014 to reinvestigate the allegations and thereafter to send a comprehensive list of the heirs to enable the public trustee continue with the administration of the estate of the deceased. See a copy of the letter marked 'JK6'

7. The deponent says that the deputy commissioner Mumias responded vide the letter dated 12.9.2014 by furnishing a fresh list of heirs and stated that the deceased had only one wife Roselyne Nasimiyu see annexure "JK7". Thereafter, the estate of the deceased was gazetted on the 31/04/2014 in the Kenya Gazette giving Notice of the Public Trustee's intention to apply to this Honourable court for Grant of letters of Administration Intestate. The Public Trustee has denied that he petitioned for Grant of letters of administration intestate fraudulently and secretly and maintains that the application was done as per the due process of law and in good faith. The Public Trustee adds that their only interest in the estate of the

deceased is to administer the estate justly and for the benefit of all the legal heirs of the deceased.

9. On the 28.01.2015 parties agreed to prosecute the Summons by way of Viva Voce evidence on 02.06.2015. Unfortunately on the 02.06.2015 Mr. Kiprono for the Public Trustee urged the court to determine the matter based on the affidavits on record since Counsel for the objector/applicant had failed to appear.

10. This court has considered the application by the objector/applicant dated 21.10.2014 and the supporting affidavit together with the annexures thereto. The Court has also carefully considered the Public Trustees replying affidavit sworn on the 23.10.2014.

11. The question which is germane to the proceedings herein is whether the applicant/objector is the 1st wife to the deceased herein. She has at paragraph 5 of her supporting affidavit annexed a copy of a marriage affidavit marked "LAG1". It is not known when the said affidavit was made because it is undated. She alleges to have cohabited with the deceased since 2004 and that she was reputed to be his monogamous wife. In the supporting affidavit the applicant claims that the deceased took out an Insurance Policy with CIC life Assurance Ltd (annexture "LAG4") and listed her as a beneficiary and at the same time the deceased included her name as his spouse on the National Hospital Insurance Fund (Annexture LAG5"). She claims that out of the said marriage they were blessed with one issue WHITNEY ADIKINYI AMUNGA see annexture 'LAG6" the Birth Certificate.

12. In the replying affidavit by the Public Trustee the Deputy County Commissioner Mumias Sub-County was tasked to investigate the allegation that the applicant was remarried. The deputy commissioner responded with a fresh list of heirs stating that the deceased had only one widow ROSELYNE NASIMIYU as per annexture marked 'JK7'.

13. From the affidavit it is not certain whether the objector/applicant was married to the deceased or not. Her allegations that she was mentioned as a beneficiary in the insurance policy and the National Hospital Insurance Fund have not been verified by other independent evidence. These issues would have been properly restated if the matter was heard orally. The applicant would have called witnesses to testify to the fact that she had cohabited with the deceased since 2004. I therefore find it hard to conclusively say that she was a wife to the deceased. The Deputy County Commissioner has not recognized her as a wife to the deceased either because she was not a wife per se or was a wife but has since remarried. That being so I find that she has not demonstrated why the Grant of Letters of Administration issued to the Respondent should be revoked. I therefore find her application unmeritorious and dismiss the same in its entirety but with no order as to costs.

14. Orders accordingly.

Ruling delivered, dated and signed in open Court at Kakamega this 3rd day of November 2015

RUTH N. SITATI

J U D G E

In the presence of:

M/s Lilian Anyango Godia (absent) for Applicant

Mr. Kiprono (present) for Respondent

Mr. Okoit - Court Assistant