



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO.1766 OF 2011**

**IN THE MATTER OF THE ESTATE OF KARL ERIK ZACHARIASSEN (DECEASED)**

**HANNAH WANGUI MIRURU.....APPLICANT/OBJECTOR**

**VERSUS**

**SVERRE FALANG ZACHARIASSEN.....1<sup>ST</sup> RESPONDENT**

**CAMILLA FALANG  
ZACHARIASSEN.....2<sup>ND</sup>RESPONDENT**

**RULING**

On 19<sup>th</sup> August 2011, the Respondents herein petitioned the court for the grant that was issued in respect of the estate of Karl Erik Zachariassen (deceased) by SØr-TrØndelag District Court in Norway resealed in Kenya. Among the beneficiaries of the deceased listed in the said grant of letters of administration is the Applicant, Hannah Wangui Miruru. She is listed as widow of the deceased. Attached to the petition, were proceedings of the said court in a preliminary hearing that was conducted on 18<sup>th</sup> October 2010. The petition was duly gazetted. The said grant was resealed by this court on 13<sup>th</sup> February 2012.

On 14<sup>th</sup> June 2012, the Applicant filed an application under **Section 4** of the **Law of Succession Act, Rules 17(2), 67 and 73** of the **Probate and Administration Rules** seeking orders of this court to stay the order issued on 13<sup>th</sup> February 2012 resealing the grant that was issued by the court in Norway. The Applicant further prayed that the order resealing the said grant be set aside. In the alternative, the Applicant prayed that the resealing of the grant issued by the court in Norway by this court on 13<sup>th</sup> February 2012 be revoked or annulled. She prayed that the time upon which she is required to object to the resealing of the grant be extended so that she can lodge her objection. Pending the hearing and determination of the application, the Applicant prayed that the Respondents, by themselves or their agents be restrained from interfering with the Applicant's possession and occupation of Plots Nos.801/1/MN and 802/1/MN. The application is supported by the grounds stated on the face of the application and by the annexed affidavit of the Applicant. In a further affidavit sworn by the Applicant, she annexed a copy of assent filed by the Respondents which indicated that the two (2) properties had already been transferred to the Respondents in their capacity as administrators of the estate of the deceased. That assent is dated 11<sup>th</sup> April 2012. She also annexed a letter by A.B. Patel and Patel Advocates dated 9<sup>th</sup> January 2013 which stated that the suit properties had been sold to one Ranjit Sondhi by the Respondents

The application is opposed. Sverre Falang Zachariassen, the 1<sup>st</sup> Respondent swore a replying affidavit in opposition to the application. He deponed that the Applicant had no basis to object to the resealing of the grant because she had participated in the petition that was filed in Norway for the issuance of grant of letters of administration in respect of the estate of the deceased. It was the Respondents' case that the Applicant had not objected to the Respondents being appointed administrators of the estate of the deceased. He deponed that prior to the issuance of the said grant of letters of administration by the court in Norway, the family had agreed that LR. Nos.801/1/MN and 802/1/MN be sold and the proceeds therefrom be divided equally among all the beneficiaries of the estate of the deceased. He therefore urged the court to disallow the application, and let the Respondents proceed with the administration of the estate of the deceased as agreed by the members of the family.

Prior to the hearing of the application, counsel for the Applicant and for the Respondents filed written

submission in support of their respective clients opposing positions. This court heard oral rival submission by Mr. Ogado for the Applicant and by Mr. Murugara for the Respondents. This court has carefully considered the said submission. The issue for determination by this court is whether the Applicant made a case for this court to revoke or annul the resealing of the grant that was issued by the court in Norway. The Applicant's application is predicated on **Section 4** of the **Law of Succession Act** which provides thus:

**“(1) Except as otherwise expressly provided in this Act or by any other written law-**

- a. **Succession to immovable property in Kenya of a deceased person shall be regulated by the law of Kenya, whatever the domicile of that person at the time of his death.**
- b. **Succession to the movable property of a deceased person shall be regulated by the law of the country of the domicile of that person at the time of his death.**

**(2) A person who immediately before his death was ordinarily resident in Kenya shall, in the absence of proof of domicile elsewhere, be presumed to have been domiciled in Kenya at the date of death.”**

It is clear from the above provision of the **Law of Succession Act** that any succession to immovable property in Kenya shall be regulated by the laws of Kenya. The two (2) parcels of land that are the subject of this succession dispute are properties in Kenya. The two (2) properties shall therefore be regulated by the laws of Kenya in so far as succession is concerned. In the present application, it is common ground that the Respondents recognize the Applicant as the widow of the deceased. The Respondents are children of the deceased from a previous marriage. There are other beneficiaries of the deceased from previous marriages. According to the proceedings before the SØr-Trøndelag District Court in Norway, the Respondents were appointed to be the administrators of the estate of the deceased. It is not clear whether the consent of the Applicant was sought before the said appointment was made. Under **Section 66** of the **Law of Succession Act**, a surviving spouse of a deceased, unless she renounces that right, has the first priority and preference in petitioning the court for a grant of letters of administration intestate in respect of the estate of the deceased spouse. It was clear from the said proceedings that the Applicant, who was acting in person, and was not present in court but was being interviewed via telephone conference, may not have fully been made aware or grasped the nature of proceedings that were taking place in that court. The Applicant said as much in her application before this court seeking to have the resealed grant revoked. On the other hand, it is the Respondents' case that the Applicant had participated in the proceedings before the court in Norway and therefore she cannot turn around and disown the findings of that court. The Respondents urged the court to uphold the findings of that court and uphold the resealing of the grant in terms of the findings made by the court in Norway.

The grant that was issued by the court in Norway was resealed under **Section 77** of the **Law of Succession Act**. Under **Section 77(2)**, this court is required, before resealing the grant, to satisfy itself that the estate duty has been paid, that there is evidence to support the domicile of the deceased persons and finally that the creditors of the estate of the deceased have been paid. In the present application, it was clear to the court that the Applicant has a case when she argues that she was kept in the dark in regard to the proceedings that took place in Norway. The Applicant wishes to ventilate her case before this court before the grant issued by the court in Norway is finally resealed. From affidavit evidence present by both the Applicant and the Respondents, it was apparent to this court that the court in Norway did not take into account the fact that the properties that comprised the estate of the deceased in Kenya may have been the matrimonial home of the Applicant. That issue will be ventilated during the hearing of this case. As stated earlier in this Ruling, any succession of immovable property in Kenya is governed by the laws of Kenya. It is stated so in **Section 4(1)(a)** of the **Law of Succession Act**. The Respondents will have to establish that indeed the finding made by the District Court in Norway conforms with the laws of Kenya in so far as it relates to the distribution of the estate of the deceased to the beneficiaries. That is an issue that can only be resolved during the full hearing of the case.

In the premises therefore, this court will allow the application as a result of which the resealing of the grant issued by this court on 13<sup>th</sup> February 2012 of the grant of letters of administration intestate issued

by the District Court of Norway at SØr-Trøndelag on 1<sup>st</sup> November 2010 is hereby revoked. Any act done pursuant to the said resealed grant is hereby set aside. The registration of the Respondents as the owners of the suit parcels of land (*i.e.* LR. Nos.801/1/MN and 802/1/MN) by virtue of the said resealed grant is hereby ordered cancelled. Any transfer to third parties is also ordered cancelled. The title of the two (2) parcels of land shall revert to the name of the deceased pending the hearing and determination of the succession dispute herein. The Applicant is granted leave to lodge objection to the resealing of the grant. She shall do so within thirty (30) days of the date of this Ruling. The Applicant shall remain in possession and occupation of the suit parcels of land pending the hearing and determination of the objection. After the lodging of the objection, the parties shall be at liberty to seek appropriate directions from this court as regard the manner of hearing of the succession dispute. There shall be no orders as to costs. It is so ordered.

**DATED AT NAIROBI THIS 2<sup>ND</sup> DAY OF JULY, 2014.**

**L. KIMARU**

**JUDGE**