



IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO. 550 OF 2008

IN THE MATTER OF ESTATE OF WILBERFORCE OUMA (DECEASED)

JANE WACHIRA KAMAU.....PROTESTOR

VERSUS

JANE WANJIRU KIMATTA.....RESPONDENT

RULING

This ruling relates to the estate of Wilberforce Ouma who died intestate on 13/6/2008. Jane Wanjiru Kimatta petitioned this court for letters of administration. Later, Jane Wachira Kamau filed an objection to the grant to Jane Wanjiru Kimatta but a consent was recorded on 27/1/2010 and adopted by the court on 28/1/2010 whereby the objection was withdrawn and it was agreed that letters of administration be issued to both Jane Wanjiru Kimatta and Jane Wachira Kamau.

The beneficiaries were identified as Brian Nelson Maboni, Juliet Shirleen Ogunda and Warren Eli Amimo.

By a summons dated 3/6/2013, Naomi Gathoni and Jackson Karimi Kimatta seek an order that this court do substitute Jane Wanjiru Kimatta with Naomi Gathoni and Jackson Karimi Kimatta. This is because the said Jane Wanjiru Kimatta died on 12/9/2012 and the two who are sister and brother of the said Jane Kimatta have already applied for letters of administration ad litem in respect of the deceased's estate in NKR Succession 43/2013. The two applicants want to be enjoined to these proceedings in order to protect the deceased's estate for the benefit of the deceased's son Warren Elly Amimo. The court was informed that Jane Wanjiru Kamau is not opposed to the application. However, Grace Apwoyo Dindi (2nd objector), the mother of the deceased, is opposed to the said application. She had filed an objection to the making of the grant on 4/12/2013

Mr. Chege, counsel for the 2nd objector, opposed the application and submitted that the application is not proper. He argued that the applicants' relationship with the deceased is far fetched and they may not be able to take care of the interests of the other houses and/or beneficiaries of the estate of Wilberforce Ouma (the original owner of the estate). Mr. Chege submitted that instead of applying to be made administrators, the applicants ought to have cited the beneficiaries to apply for administration of the estate.

While admitting that the applicants are not beneficiaries of the estate, Mr. Karanja submitted that one does not have to be a beneficiary in order to be an administrator. He explained that the applicant seeks to protect the interests of the deceased's child, (Warren Elly Amimo). Mr. Karanja argued that unless the application is granted, the deceased's estate will be left without an administrator.

I have considered the rival arguments made for and against the application herein. The sole issue for determination is whether the applicants have made a case for appointment as administrator in this case.

It is not in dispute that the applicants are not beneficiaries to the estate of Wilberforce Ouma to which the Succession cause herein relates. It is also not in dispute that the applicants are related to Jane Wanjiru Kimatta (deceased) whose child has an interest in the estate by virtue of being a child of the deceased Wilberforce Ouma.

Having considered the rival arguments herein and the applicable law, particularly section 56 of the Law of Succession Act, Chapter 160 Laws of Kenya as read with Section 70, I find and hold that the law does not prohibit issuance of grant to persons who are not closely related to a person whose estate letters of administration are sought. The sections provide as follows:-

“56.(1) No grant of representation shall be made-

(a) to any person who is a minor, or of unsound mind, or bankrupt; or

(b) to more than four persons in respect of the same property.”

“70. Whether or not there is a dispute as to the grant, a court may, before making a grant of representation-

(a) examine any applicant on oath or affirmation; or

(c) Issue a special citation to any person appearing to have reason to object to the application.”

The question is, whether the applicants should be preferred as administrators instead of the deceased's mother, who even takes care of one of the deceased's children, Juliet Shirleen Ogunda? Infact the two applicants seek to come on record but there is already another administrator, Jane Wachira Kamau and it would not be necessary to have two of them. In my view, I would only allow one of the applicants, Naomi Gathoni to come on record in place of the deceased sister to protect the interests of the minor, Warren Elly Amimo.

I would also add to the administrators, Grace Apwoyo Dindi, the deceased's mother who claims to be a beneficiary and takes care of one of the deceased's children.

Finally, I take cognisance of the fact that a grant of representation, whether limited or not, does not confer power to distribute any capital assets, or to make any division of property unless and until it is confirmed.

The upshot of the foregoing is that the application is allowed in part. The administrators of the deceased's estate will be Jane Wachira Kamau, Naomi Gathoni and Grace Apwoyo Dindi. Costs be in the cause.

DATED and DELIVERED this 11th day of July, 2014.

R.P.V. WENDOH

JUDGE

PRESENT:

N/A for the protestor

Mr. Njuguna for the respondent

