



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Succession Cause 2830 of 2007

IN THE MATTER OF THE ESTATE OF NEMWEL NYASAGARE NYANARO (DECEASED)

RULING

The application dated 10th February 2012 is in the nature of an application for review. This court had on 9th June 2011 made directions on the appointment of administrators. Janet Magoma Onkundi, the applicant herein, had been given first priority to apply for letters of administration and it had been directed that upon her so petitioning for the letters she shall be appointed administrator. It was also ordered that the respondent, Janepher Kemunto Nyanaro, was to be appointed co-administrator.

It is significant that the court did not appoint the two administrators of the estate. The applicant herein was to apply for letters of administration in the usual way, jointly with the respondent. Following the lodge of the said papers in court the two were to be appointed administrators on the strength of the court's order of 9th June 2011. These orders of the court of 9th June 2011 have not been complied with to date, hence this application.

The applicant would like the court to review the orders so that she can be appointed administrator with someone other than Janepher Kemunto Nyanaro. The parties, according to the affidavit of the applicant, have not made any headway in the matter due to non-cooperation from the respondent. She is said to have declined to sign the petition papers sent to her by the applicant. Although there is evidence that this application was served on the respondent, she has not replied, and therefore the court has not had the benefit of her side of the story. Although the applicant would like the court to appoint her administrator with another, that other has not been suggested. However, her advocate has in his submissions suggested the appointment of the Deputy Registrar as a co-administrator.

It has been stated by the courts time and again that the court has final discretion when it comes to appointment of administrators by virtue of section 66 of the Law of Succession Act. It is usually left to the family to agree on the persons they would prefer to be appointed as administrators. A reading of section 66 would suggest that the family does not have a final say. Section 66 has come up with list of preference. Priority is given to the surviving spouse, followed by the children, followed by the parents, followed by siblings, followed by other relatives and finally, followed by the Public Trustee and creditors. The Deputy Registrar of the Court does not feature in that order of priority, and there would no basis at all in appointing him administrator of an estate of a deceased person.

The persons who should have been appointed administrators, according to the court's order of 9th June 2011, have failed to implement the said order. This has grounded the administration of the estate. The deceased died on 27th August 2007 and to date administration of his estate has not commenced, courtesy of the wrangling between the widow and her mother-in-law. The court should not countenance such state of affairs. The estate ought to be administered. It should not be allowed to go for such a long period of

time without an administrator. Such a situation would mean that some person is presently handling estate property illegally as the property does not vest in any one at the moment. It would mean that someone is intermeddling with the estate. It is incumbent on this court to act to correct this state of affairs.

The widow cannot act as sole administrator in view of **Section 58** of the Law of Succession Act as there are minor surviving children. As the mother-in-law has stalled the process by failing to cooperate it would appear that she would not be suitable. In any case it would appear that even if they both are appointed administrators they would most likely be unable to agree on the administration. The applicant has not suggested any other person who is suitable. In exercise of the discretion given to the court by sections 58 and 66 of the Law of Succession Act, I appoint the Public Trustee as administrator of the intestate estate of Nemwel Nyasagare Nyanabo.

It is a pity that the battle between the two women centres on the pension benefits held by the Kenya Revenue Authority Staff Pension Scheme and the investments in the Ushuru Savings & Cooperative Society. Such investments are usually not subject to the law of succession, but to the law governing pensions and investments in cooperative societies as stated in the Retirement Benefits Act and the Cooperative Societies Act. The fight over these investments in this court could be an exercise in futility, and the parties are advised to carefully scrutinise the instruments in their possession relating to such pensions and investments.

For the avoidance of doubt, the orders that I make in this matter in respect of the summons dated 10th February 2010 are:

- 1) That a certificate to that effect shall be issued to the said Public Trustee;
- 2) That grant of letters of administration intestate in respect of the estate of Nemwel Nyasagare Nyanaro is hereby made to the Public Trustee;
- 3) That the Deputy Registrar is directed to notify the Public Trustee accordingly;
- 4) That there shall be no orders on costs.

It is so ordered.

W MUSYOKA

JUDGE

DATED, SIGNED and DELIVERED at NAIROBI this 3rd DAY OF April 2013.