



Sewe v Sewe & another

REPUBLIC OF KENYA

Court of Appeal at Nairobi

January 19, 1991

Gachuhi, Gicheru JJ A & Cockar Ag JA

Civil Appeal No 20 of 1990

(Appeal from the Judgment of the High Court at Kisumu, Butler-Sloss J,
dated 4th September 1986 in High Court Civil case No 8 of 1985)

Succession – *Probate and Administration – grant of letters of administration – number of administrators where there is a continuing trust – Succession Act (Cap 160) section 58.*

The appellant was appealing against an order allowing the respondents to be appointed as administrators of his deceased father's estate. The first respondent was his brother while the second respondent was his mother. The appellant had in the High Court sought to be appointed administrator without consulting the respondents.

The appellant appealed on the grounds that the judge in dismissing his application failed to take into account the provisions of section 29(a) of the Law of Succession Act (cap 160) and that the first respondent had contravened section 45 (1). It transpired during the hearing of the appeal that the property concerned should be held on trust as all parties had interest in it. The respondents feared that if the appellant was appointed sole administrator he would sell the land where their mother was staying without their knowledge.

Held:

1. It was evident that a grant should not be issued in the name of one person but should be issued in terms of section 58(1) of the Law of Succession Act (cap 160) to all the parties.
2. (*Obiter*) The appointment of an administrator is not the same as distributing the assets to those who are entitled to inherit. When the time came for inheritance, they would have to come to court by which time they would have sorted out who should inherit the land and in what proportion.

Appeal allowed.

Cases

No cases referred to.

Statutes

Law of Succession Act (cap 160) sections 29(a), 45(1), 51, 58(1)

January 19, 1991 the following Judgment of the Court was delivered.

The appellant applied to the High Court under section 51 of the Succession Act (cap 160) for appointment as the administrator of the estate of his father Ishmael Sewe Miyumo who died on 25th September 1982. This he did without consulting his mother or his elder brother. The Court wrote to the respondents for their consent. The respondents became aware of the action taken by the appellant and objected to the appellant being appointed the administrator of the estate. The dispute went to hearing. All parties were unrepresented. At the hearing, there were accusations and allegations between the brothers of the unsuitability of either of them being appointed the administrator. The trial judge after hearing their submission delivered his judgment allowing the respondents to be appointed the administrators and dismissing the appellant's application.

The appellant has appealed to this Court on the grounds that the trial judge failed in not putting into account the provision of section 29(a) and that the first respondent had contravened section 45(1) of the Succession Act Cap 160 of the Laws of Kenya.

During the hearing of the appeal it transpired that the property should be held on trust as all parties had interest in it. There was fear among them that if the appellant was appointed a sole administrator of the estate, he might sell the land where their mother is staying without the knowledge of the respondents. The mother submitted that in order to maintain peace, all three of them should be appointed administrators so as to safeguard the property from waste and alienation. It is evident that the grant should not be issued in the name of one person but should be issued in terms of section 58(1) of the Succession Act (cap 160) to all the parties.

We wish to make it absolutely clear to the parties that the appointment of the administrator is not the same as distributing the assets to those who are entitled to inherit. When the time comes for inheritance, they will have to come to court by which time they will have sorted out who shall inherit the land and in what proportion.

The first respondent's concern is to protect the interest of the mother who is now staying on the land. All parties want to live in peace. For that reason we allow this appeal and order that Rosebella Sewe, George Zablon Angungo Sewe and George Ouko Sewe alias John Ouko Sewe shall apply to be appointed administrators of the estate of Ishmael Sewe Miyumo. Each party shall bear his/her costs of this appeal.