



**Ondara v Cheboi (Miscellaneous Application E223 of 2022)
[2024] KEHC 15506 (KLR) (Family) (19 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 15506 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E223 OF 2022
EKO OGOLA, J
MARCH 19, 2024**

BETWEEN

PERIS ONDARA APPLICANT

AND

SHEM CHEBOI RESPONDENT

RULING

1. There are two applications before this court. The first is dated 26th October 2022 and filed by the applicant. She prays for the following orders:-
 - a. Spent;
 - b. That this honorable court be pleased to issue an order directing and compelling the respondent to issue the applicant with an official letter of introduction pertaining to the estate of Zachary Mumbo Mosoti (deceased), who died on 10th December 2022, while domicile in Ruai location, Nairobi County, for purposes of petitioning the court for a grant of letters of administration to the said estate.
 - c. That the officer in charge of Ruai Police Station and/or any other police station in the Republic of Kenya do ensure compliance with the said orders.
 - d. That the costs of this application be borne by the respondent.
2. The application was based on the grounds set out therein and the applicant's supporting affidavit.
3. The applicant stated that she is the widow of the late Zachary Mumbo Mosoti who died on 10th December 2022. According to the applicant, she is a beneficiary of the deceased estate and, therefore, entitled to petition the court for the issuance of grant of letters of administration, The applicant



- deposed that owing to the requirements of filing a succession cause, she approached the respondent (the area chief) on numerous occasions to acquire an introduction letter but he declined to furnish the same. The applicant deposed that the respondent has failed to respond to her letter dated 13th October 2022 requesting the respondent for the said introductory letter.
4. In response to the application, the proposed interested party filed a Replying Affidavit dated 16th December 2022. She deposed that she was the legally recognized wife of the deceased with a valid marriage certificate that was never annulled on grounds of divorce. Therefore, the applicant's marriage certificate is fraudulent and ought to be investigated as it is a clear depiction of bigamy. Furthermore, there is an ongoing Succession Cause 'HCFP&A E.3450/2022, In the Estate of Mosoti Zachary Mumbo'.
 5. According to the proposed interested party, the area chief of their location in Kisii County who knew the deceased and the family refused to issue the applicant with an introductory letter to institute the succession cause aforementioned, since he had already issued one to her as the deceased legally recognized wife. The proposed interested party deposed that the applicant approached the respondent, area Chief of Ruai to issue her with a letter but the respondent also refused.
 6. There is also a Replying Affidavit dated 26th April 2023 sworn by Anderson K. Cheruiyot the senior assistant chief Ruai Sub-location Njiru Sub-county. He deposed that he learnt of this application when the applicant's advocate on record visited his office with a letter requesting for an introductory letter. Mr. Cheruiyot advised the advocate that the applicant should seek this letter from the area chief in Kisii County where the deceased was buried as that was the procedure. This letter should indicate the beneficiaries of the deceased and any other information. The applicant was also to avail the eulogy of the deceased, the death certificate and burial permit.. Thereafter, and with the strength of this letter, he too could write an introductory letter.
 7. According to Mr. Cheruiyot, the advocate informed him that the applicant was frustrated by the chief in Kisii, and that is why she had approached him. In response, he informed the advocate that his hands were tired with regard to that matter.
 8. Mr. Cheruiyot further deposed that he conducted due diligence and contacted the area chief of the deceased rural home, that is, the chief of Gesima Location, Nyamira County and he was informed that the applicant was a stranger to them. However, the said chief knew the deceased, his widow, Gladys Kerubo Mosoti, and his children. The chief stated that he had already issued an introductory letter to the proposed interested party.
 9. Mr. Cheruiyot deposed that the procedure for issuing an introductory letter is that the beneficiary should appear before the chief; the chief should confirm the place of residence; the eulogy, death certificate, and burial permit should be availed; and lastly if the deceased was not buried in his jurisdiction, the chief of the place of burial should issue a letter ascertaining that the deceased was buried there and state the beneficiaries. Without the aforementioned, an introductory letter cannot be issued. Mr. Cheruiyot stated that this procedure was not followed by the applicant.
 10. Furthermore, Mr. Cheruiyot deposed that he does not know of any one by the name Shem Cheboi. He deposed that the senior chief is known as Nyabutu Omachi. Mr. Cheruiyot deposed that he has not in any way violated the applicant's rights of inheritance.
 11. The second application is dated 24th November 2022. It was filed by the proposed interested party who prays for the following orders:-
 - a. Spent;



- b. This honorable court be and is hereby pleased to enjoin Gladys Kerubo Mosoti as an interested party in the suit.
 - c. Any other orders that this court may deem fit and just in the circumstances.
 - d. Costs of this application be provided for.
12. The application is based on the grounds set out therein and the supporting affidavit of the proposed interested party.
13. The proposed interested party deposed that she is a necessary party in this suit since she was the legally recognized wife of the late Zachary Mumbo Mosoti with a valid marriage certificate that was never annulled on grounds of divorce. Furthermore, she deposed that there is an ongoing suit '*Civil Suit No. E123 of 2022* between her and the applicant over LR No. Nairobi/Block/ 136/281. She added that in that suit, there is a court order of temporary injunction against the applicant herein from dealing and interfering with the said land in any way. According to the proposed interested party, the said land and the deceased matrimonial home belonging to her.

Determination

14. I have considered the two applications, the affidavits and the record of the court. Furthermore, I have perused the record of the court in *Succession Cause No. E. 3450 of 2022*, In the matter of the Estate of Mosoti Zachary Mumbo (deceased). The proposed Interested party filed a Petition for grant of letters of administration on 25th July 2022. The applicant filed her Objection on 20th March 2023. The matter is yet to be determined. The applicant thereafter instituted this Miscellaneous Application to compel the respondent to issue her with an introductory letter for her to commence succession proceedings for the deceased estate.
15. The applicant failed to mention that there are ongoing succession proceedings. I am of the view that this application was meant to mislead the court to issue orders that would conflict with the Succession proceedings, in *HCFP&A E.3450/2022*. This court frowns upon the filing of multiple suits on similar issues, as forum shopping is an abuse of the court process. The applicant should ventilate all her issues in *HCFP&A E.3450/2022*.
16. From the foregoing, I dismiss the first application dated 26th October 2022. The applicant to bear the costs. The second application dated 24th November 2022 is hereby allowed. There will be no orders as to costs.
17. This file is now closed.
- Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF MARCH 2024

E.K. OGOLA

JUDGE

In the presence of:

Mr. Mabeya h/b for Mr. Omari for the Applicant

Ms. Kathurume for the Respondents

Gisiele Muthoni Court Assistant

