



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1966 OF 2012

(CONSOLIDATED WITH SUCCESSION CAUSE NO. 942 OF 2012)

IN THE MATTER OF THE ESTATE OF SALIM HUSSEIN DUNGARWALLA (DECEASED)

NEELAM DUNGARWALLA.....APPLICANT

VERSUS

NEGAT SHAHIN ILAHI.....1ST RESPONDENT

ABDUL HAMID.....2ND RESPONDENT

RULING

1. The deceased Salim Hussein Dungarwalla died on 30th July 2011. On 29th August 2012 the respondents Negat Shahim Ilahi and Abdul Hamid filed petition for the grant of letters of administration intestate. The 1st respondent filed a supporting affidavit in which she stated that she was the deceased's widow and the 2nd respondent was the deceased's son. On the basis of that a grant was issued on 28th January 2013 and confirmed on 13th November 2013. This grant was on 18th January 2016 revoked. This followed the application by the applicant Neelam Dungarwalla seeking the revocation of the grant on the basis that the deceased had left a written Will in which she was the executrix; she had not been made aware of the petition; the 1st respondent was not the deceased's widow; and the 2nd respondent was not the deceased's son.

2. On 10th June 2016 the applicant filed the present application seeking leave to apply for an order for committal of the 1st respondent to civil jail for a period not exceeding 6 months for making a false statement under oath. It was alleged that in the affidavit in support of the application for revocation of the resealed grant of probate of written Will the 1st respondent had stated that she was married to the deceased on 28th June 1998 under Islamic Law, but that in **Adoption Cause No. 102 of 2006** she had on 5th July 2006 stated that she was single and did not intend to engage in any union that may lawfully become polygamous, and neither was she a homosexual.

3. The application was opposed. Both sides were represented and filed written submissions which I have considered.

4. Under **section 8** of the **Contempt of Court Act No. 46 of 2016** a party does not require leave of court to bring proceedings for civil contempt of court.

5. Under **section 4** of the **Act**, the contempt of court contemplated involves the –

“wilful disobedience of any judgment, decree, order, or other process of court or wilful breach of an undertaking given to a court”

or

“any act that is wilfully committed to interfere, obstruct or interrupt the due process of the administration of justice in relation to any court, or to lower the authority of a court, or to scandalise a judge, judicial officer in relation to any proceedings before the court”

6. What is alleged in the application is perjury. Perjury is defined in **Black’s Law Dictionary, 9th Edition at page 1254** as –

“The act or an instance of a person’s deliberate making material false or misleading statements while under oath.”

Under **section 108(1) (a)** of the **Penal Code**, it is an offence of perjury to knowingly, in any judicial proceedings, swear a false statement or affidavit.

7. Perjury is not a criminal contempt as defined under **section 4(b)** of the **Contempt of Court Act**.

8. Consequently, I find the application incompetent and strike it out with costs.

DATED and SIGNED at NAIROBI this 28TH JUNE 2017.

A. O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI this 29TH JUNE 2017.

W. MUSYOKA

JUDGE



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