

IN THE HIGH COURT OF SWAZILAND

CIVIL CASE NO. 4124/2005

ARLENE BLANCHE KARAMITSOS (EXPARTE)

PLAINTIFF

CORAM : Q.M. MABUZA - A.J.

FOR PLAINTIFF: B.M. MDLULI

JUDGMENT 25/11/05

This matter came before me on the 18th November 2005 by way of an ex parte application. After hearing counsel for the applicant I indicated to him that I would reserve my judgment. I now deliver that judgment.

In the application the applicant Arlene Blanche Karamitsos seeks an order in the following terms:

- (a) Directing and/or authorizing the Master of the High Court of Swaziland to accept as the Last Will of Blanche Muriel Fortune (born Ray) the copy of her Will dated at Manzini, Swaziland on the 8th April 2003.
- (b) Directing and/or authorizing the Master of the High Court of Swaziland to accept as the Last Will of

Alexander Gustave Fortune the copy of his Will dated at Manzini, Swaziland on the 14th November 2000.

(c) That the costs of this application be paid out of the Estate of the late Blanche Muriel Fortune and the estate of the late Alexander Gustave Fortune.

(d) Further and/or alternative relief.

In support of the application, the applicant deposed to an affidavit wherein she revealed that she was the daughter of the deceased the late Blanche Muriel Fortune who died at Nelspruit South Africa on the 26th July 2004 and the sister to the late Alexander Gustave Fortune who died at Manzini, Swaziland on the 20th January .2001.

In her affidavit she states that she was present when both deceased persons prepared and had their Wills signed and witnessed and this was done on the 15th November 2000 by her brother the late Alexander Gustave Fortune and on the 8th April 2003 by her late mother Blanche Muriel Fortune. Both Wills were thereafter entrusted to the Applicant for safe keeping and for the eventual registration with the Master of the High Court. Both Wills appointed her Executrix Testamentary. The Wills were properly attested to. In the case of the late Alexander Gustave Fortune the witnesses were Michael Karamitsos and Basil Fortune. In the case of Blanche Muriel Fortune the witnesses were Wendy Goncalves and Beverly Fortune.

Unfortunately the originals of both Wills got lost and all that the applicant was left with were copies of the original Wills. She tried filing these copies with the offices of the Master of the High Court of

Swaziland when she reported the estates of both deceased but the copies were refused by the said office.

The matters pertaining to the deceased Blanche Muriel Fortune are confirmed by Wendy Goncalves who is a daughter to the said Blanche Muriel Fortune and also a sister of the Applicant.

In the affidavit Wendy Goncalves confirms that she was present when Blanche Muriel Fortune signed her Will and that she was a witness thereto. She also states that she has examined the copy of the Will and confirms that it is a true copy of the original Will of the said Blanche Muriel Fortune. I have difficulty with the last statement but will not dwell much thereon.

The matters in applicant's affidavit relating to Alexander Gustave Fortune are confirmed by the Applicants husband one Michael Karamitsos who states that he was present when the said Alexander Gustave Fortune prepared and signed his Will and that he was a witness thereto.

He also states that he has examined the copy of the Will and confirms that it is a true copy of the original Will of the said Alexander Gustave Fortune.

Counsel for the applicant supported his submissions with regard to (a) and (b) of the Notice of Motion by referring this Court to "The Law of Succession in South Africa" a book authored by the Honourable M.M.

all interested parties (My emphasis) to show cause why the Master should not be authorized to accept

the draft as the last Will of the deceased.

Likewise in the present application, the Court feels that it would not only be prudent but the interests of justice would be best served if all interested parties were to be cited and served with the proceedings. Interested parties would inter alia include persons who would inherit or be beneficiaries if both deceased had died intestate. In the case of minors the Court would appoint a curator ad litem to represent them should it be necessary to do so.

In the circumstances the Court finds that the appropriate course of action by the Applicant is to seek an order declaring the copies of the Wills of both deceased persons to be their Wills and to authorize the Mater of the High Court to accept these copies. Any proceedings instituted by the Applicant in this matter should be served on all interested parties.

The present application is refused and accordingly dismissed.

Q.M. MABUZA

ACTING JUDGE