



**In re Estate of Hellen Margaret Mary McGowan (Deceased) (Succession Cause E2593 of 2021) [2023] KEHC 2428 (KLR) (Family) (17 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 2428 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE E2593 OF 2021  
MA ODERO, J  
FEBRUARY 17, 2023**

**IN THE MATTER OF THE ESTATE OF HELEN MARGARET MARY MCGOWAN (DECEASED)**

**BETWEEN**

**DANIEL YEOWARD ..... APPLICANT**

**AND**

**ANASTASIA GIANOPULOS ..... 1<sup>ST</sup> RESPONDENT**

**SHIVONA TAVARES WALSH ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before this Court for determination is the summons dated May 27, 2022 by which the Applicant Daniel Yeoward sought the following orders:-
  - “(a) Reasonable provision totalling a lump sum payment of Kes 40 Million be hereby made to the Applicant out of the Deceased’s estate.
  - (b) Costs of this Application be in the cause”
2. The Application was premised upon Sections 26, 27, 28 and 29 of the *Law of Succession Act* Cap 160 Rule 45 of the *Probate and Administration Rules* 7980 and all other enabling provisions of Law and was supported by the Affidavit of even date sworn by the Applicant.
3. The Respondents Anastasia Gianopulos And Shivona Tavares Walsh who are the executors of the will of the Deceased opposed the application through the Replying Affidavit dated July 25, 2022 sworn by the 1<sup>st</sup> Respondent.



4. The matter was canvassed by way of written submission. The Applicant filed the written submissions dated November 14, 2022, whilst the Respondents relied upon their written submissions dated November 16, 2023.

### **Background**

5. This matter relates to the estate of the late Helen Margaret Mary Mcgowan (hereinafter ‘the Deceased’) who passed away on November 28, 2021 at the Aga Khan Hospital in Nairobi. A copy of the Death Certificate Serial Number 1290392 is annexed to the petition for grant of probate dated December 15, 2021.
6. The Deceased who had no spouse and no children died testate having left a written will dated January 10, 2020. The Respondents herein were the persons named in the will as Executors. A grant of probate was duly issued to the Respondents on June 20, 2022. However before the Grant could be confirmed the Applicant filed this application seeking reasonable provision from the estate.
7. The Applicant who avers that he is a nephew of the Deceased takes issue with the fact that no provision was made for him by the Deceased in her written will. The Applicant asserts that he is a dependant within the meaning ascribed by Section 29 of the *Law of Succession Act*, Cap 160, laws of Kenya. He states that the Deceased extended to him financial assistance after December 2020 when due to the Covid -19 pandemic he was declared redundant by his employer.
8. The Applicant states that the estate of the Deceased is conservatively valued at approximately Kshs 100 Million. He prays that as a blood relative he is entitled to a lump sum of Kshs 40 Million out of the net estate of the Deceased.
9. As stated earlier the application is opposed. The Respondent insist that the written will left by the Deceased ought to be honoured and upheld. The Respondents who are the Executors of the Deceased’s will state that the Applicant did not live with or care for the Deceased’s during her illness. The Respondents deny that the Applicant was dependant on the Deceased in any way whatsoever.
10. The Respondents aver that the Applicant never visited the Deceased during her illness nor did he participate in her funeral rights. They assert that the Applicant has no valid claim to the estate of the Deceased and urge the Court to dismiss this application.

### **Analysis and Determination**

11. I have carefully considered the application filed before this court the Affidavit filed in reply thereto as well as the written submissions filed by both parties. The only issue for determination is whether the Applicant can be deemed a dependant of the Deceased and whether he is entitled to an order for reasonable provision from the estate of the Deceased. Section 26 of the *Law of Succession Act*, Cap 160 provides as follows:-

“26. Where a person dies after the commencement of this Act, and so far as succession to his property is governed by the provisions of this Act, then on the application by or on behalf of a dependant, the court may, if it is of the opinion that the disposition of the deceased’s estate effected by his will, or by gift in contemplation of death, or the law relating to intestacy, or the combination of the will, gift and law, is not such as to make reasonable provision for that dependant , order that such reasonable provision as the court thinks fit shall be made for that dependant out of the deceased’s net estate.



12. Section 26 therefore authorizes a court to make reasonable provision for a dependant out of the net estate of the Deceased in situations where no provision has been made for said dependant.
13. In order to qualify for such reasonable provision an applicant must satisfy the court that he was infact a dependant of the deceased.
14. Section 29 of the *Law of Succession Act* sets out the meaning of the term ‘dependant’ as follows:  
For purposes of this Part, “dependant’ means---
  - a. the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
  - b. such of the deceased’s parents, step-parents, grand-parents, grand children, step-children, children whom the deceased had taken into his family as his own, brothers and sisters and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
  - c. where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.
15. The Applicant herein is not the spouse or child of the Deceased. Indeed it is common ground that the Deceased had no spouse and no children.
16. The Applicant claims to be a nephew of the Deceased. Section 29 makes no mention of ‘nephews’. In *re Estate of JFF (Deceased) [2018] eKLR*, the Court observed as follows:-  
  

“It is not disputed that the Deceased was unmarried and childless and that he was survived by his sister, his nephews and nieces. The Applicants are nephews and niece of the deceased. A reading of the foregoing provision does not reveal that nieces and nephews are dependants for the purposes of Section 26 of the Act. Even if they are dependants, it is doubtful that they would be entitled to make an application for reasonable provision. Under Section 29 of the Act, only a wife or a child of a deceased person need not prove dependency. All other dependants must show that they were maintained by the deceased person immediately prior to his demise. There is no evidence that the Applicants were maintained by the Deceased immediately prior to his demise or at all. In the circumstances, this Court finds that the Applicants are devoid of locus standi to apply for reasonable provision under Section 26 of the Act.” [own emphasis]
17. In order to merit the orders he is seeking the Applicant must prove that he was being maintained by the Deceased immediately prior to her death.
18. The Applicant claims that the Deceased extended financial assistance to him in December 2020 when the lost his job due to the negative economic effects of the Covid – 19 Pandemic.
19. Firstly the Applicant has not annexed any evidence at all to prove that the Deceased extended to him any financial help whatsoever. There are no copies of cheques made out to the Applicant or transfers to his account.
20. Secondly the fact that the Deceased may have given the Applicant handout here and there does not mean that he was dependant on her. A helping hand extended to the Applicant (of which there is no proof) by the Deceased during a rough patch in his life does not make him a dependant under the meaning of Section 29.



21. The Applicant in his replying Affidavit avers that vide a consent dated August 3, 2022 he was recognized as a beneficiary of the estate of the Deceased entitled to benefit from said estate.
22. I have carefully perused the consent dated August 3, 2022. Nowhere in that consent is it stated that the Applicant is to be recognized as a beneficiary of the estate. The mere reference to him as the Applicant/beneficiary does not confer upon the Applicant the status of a beneficiary to the estate. The Applicant cannot rely on this consent as proof that he is a beneficiary.
23. In short I find no evidence at all to show that the Applicant depended on the Deceased immediately prior to her demise. He has no basis upon which to seek reasonable provisions from the estate. I find no merit in this application. The same is dismissed in its entirety and costs are awarded to the Respondents.

**DATED IN NAIROBI THIS 17<sup>TH</sup> DAY OF FEBRUARY, 2023.**

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**MAUREEN A ODERO**

**JUDGE**

