



In re Estate of Justus Mugambi Maingi (Deceased) (Succession Cause E016 of 2021) [2023] KEHC 23011 (KLR) (28 September 2023) (Ruling)

Neutral citation: [2023] KEHC 23011 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE E016 OF 2021
TW CHERERE, J
SEPTEMBER 28, 2023**

IN THE MATTER OF THE ESTATE OF JUSTUS MUGAMBI MAINGI (DECEASED)

BETWEEN

ZIPPORAH KATHAMBI MUGAMBI APPLICANT

AND

MERCY KANUTHU AKWALU PROTESTOR

RULING

1. This ruling relates to the issue of whether or not Mercy Kanuthu Akwalu was wife of deceased.
2. Mercy Kanuthu Akwalu, the Objector stated she married the deceased under Meru Customary Law in January, 2000. In support of her case, the Objector tendered copies of 4 cheques issued jointly to her and deceased in 2014, 2019, 2020 and 2021 for Safaricom shares they held jointly, an affidavit of marriage dated 07th January, 2008, sale agreement dated 05th January, 2009 in which she jointly purchased land with the deceased, letter dated 11th February, 2022 from her insurer Minet Kenya Insurance in which deceased is named as her spouse, an admission form by which she in her capacity as spouse applied for admission of deceased to Nairobi hospital on 16th March, 2018, her NHIF statement showing deceased received treatment as her spouse, copy of deceased's eulogy in which she and Applicant are named as wives of deceased, copy of eulogy of deceased's brother in which she's named as his sister in law, chief's letter in which she and Applicant are named as wives of deceased and an advertisement of the eulogy of the deceased in which she and Applicant are named as wives of deceased.
3. Deceased's brother Joseph Mutwiri Maingi stated that Applicant was deceased's 1st wife and Objector the 2nd wife. It was his evidence that deceased had paid dowry for the Objector and lived with her before his demise. He also confirmed that deceased received medical treatment under the medical insurance cover of the Objector. Joyce Nkatha Maingi, deceased's brother stated that both the Petitioner and



Objector were deceased's 1st and 2nd wives respectively. Silas Mutiga, Chief Mituntu Location from where deceased resided stated that he did not know about the Objector until deceased died in 2019.

4. Zipporah Kathambi Mugambi, the Petitioner stated she married deceased under *African Christian Marriage and Divorce Act*, Cap 151 Laws of Kenya in 1986. She conceded that Deceased received medical treatment under the insurance cover of the Objector who was named as his wife and also that her name and that of the Objector appeared on copies of deceased and his brother's eulogies as wives of the deceased. Her son Daniel Mwirigi similarly confirmed that Deceased received medical treatment under the insurance cover of the Objector who was named as his wife and that her name and that of his mother Zipporah appeared on copies of deceased and deceased's brother's eulogies as wives of the deceased.
5. Edward Kaibiria, deceased's cousin stated that he became aware of the Objector after deceased died and confirmed that she was named as his widow in the copy of eulogy tendered in court. Gabriel Mutia who stated he is from the same clan as the deceased stated that he received information from deceased's siblings that that deceased had two wives but he did not know the 2nd wife. Henry Maingi, a friend of the deceased similarly stated that he did not know that deceased had two wives.

Analysis And Determination

6. Zipporah Kathambi Mugambi stated that she married the deceased under the *African Christian Marriage and Divorce Act*, Cap 151 Laws of Kenya but did not tender any support thereof and this court makes an inference that she was married under Meru Customary Law to which she and deceased professed.
7. There is evidence from Deceased's brother and sister that Deceased was married to both the Applicant and the Objector. That Objector not only owned joint properties with the Deceased but also cohabited with him, paid his hospital bills and was recognized as his wife in my considered view leaves no doubt in the mind of the court that both Zipporah Kathambi Mugambi and Mercy Kanuthu Akwalu are lawful wives of the deceased.
8. It is therefore hereby ordered as follows:
 1. Both Zipporah Kathambi Mugambi and Mercy Kanuthu Akwalu are hereby appointed as joint administrators of the estate of the Justus Mugambi Maingi (Deceased)
 2. Letters of Administration shall issue jointly to Zipporah Kathambi Mugambi and Mercy Kanuthu Akwalu
 3. Upon issuance, of the Letters of Administration, the Administrators shall either jointly or separately apply for confirmation of the grant after identifying the assets of the deceased and the rightful beneficiaries
 4. To avoid duplication, if any of the administrators files the application for confirmation, the other shall need not file another application but will be at liberty to file an objection if need be
 5. Mention on November 21, 2023 to confirm compliance with these orders and for further directions

DATED AT MERU THIS 28th DAY OF SEPTEMBER 2023

T. W. CHERERE

JUDGE



Appearance

Court Assistant - Morris Kinoti

For Applicant - Mr. Kaimba For Kaimba & Siboe Advocates

For Objector - Mr. Kaba For M.d.maranya & Co. Advocates

