



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MURANG'A**

**SUCCESSION CAUSE NO. 57 OF 2014**

**RE ESTATE OF MANASSEH MWEA KARIUKI (DECEASED)**

**MARY MURUGI MWEA.....PETITIONER**

**VERSUS**

**LILIAN NJERI MWANGI.....PROTESTOR**

**JUDGMENT**

1. Manasseh Mwea Kariuki (hereafter *the deceased*) died intestate on 10<sup>th</sup> September 2007. A dispute has arisen over the distribution of *part* of his estate. To be exact, the disputants agree to the distribution of *all* other assets *except* the terminal benefits of the deceased held at Commercial Bank of Africa.

2. The protestor stakes a claim of Kshs 10,000,000 in trust for her son. The petitioner on the other hand avers that the exact amount of the terminal benefits remains unknown. She proposes that the protestor should get a share of 30% and the rest devolves to the petitioner and her three children.

3. On 27<sup>th</sup> April 2021, both learned counsel proposed that the issue be determined by written submissions. The petitioner's submissions were filed on 7<sup>th</sup> July 2021 with a list of authorities. Those by the protestor were lodged earlier on 2<sup>nd</sup> June 2021.

4. I should state that although the protestor sought an equal share of the estate by all the children of the deceased, her learned counsel confirmed to court on 27<sup>th</sup> April 2021 that her claim was limited to the sum of Kshs 10,000,000 and pegged to the terminal benefits. Doubt is removed by paragraph 5 of her *affidavit of protest* sworn on 11<sup>th</sup> January 2021.

5. The letter referred to in paragraph 5 of that affidavit was *not* presented to court. But even assuming that the claim was conditional on distribution of the entire estate, no *valuation* of the properties or *current* bank statements were produced. The parties opted to proceed by way of submissions. There is thus no evidential basis to grant the prayer by the protestor in those terms.

6. A brief history of the litigation is also relevant. The petitioner applied for a grant of letters of administration in her capacity as the widow of the deceased. But before a grant was issued, an objection was lodged by the protestor claiming that she was also a wife of the deceased. She deposed that they had one son, Innocent Denva Mwea. That claim was denied by the petitioner.

7. After protracted interlocutory proceedings, the parties filed a consent dated 17<sup>th</sup> April 2018 which *withdrew* the objection; and, allowed the grant to be issued *solely* to the petitioner. Summons for confirmation of the grant were subsequently filed on 14<sup>th</sup> June 2019. An affidavit of protest was lodged on 12<sup>th</sup> January 2021.

8. Like I stated, the parties agree that the following properties should devolve wholly to the petitioner and I would so order-

i) Plot No. L.R. No. 11/1120/181, Sector B Nairobi.

ii) Land Parcel No. Loc. 10/ Wanjengi/1125.

iii) Shares at Kenya Airways Limited, Kenya Commercial Bank Limited, Kalamka Limited, Wangu Investments Limited and Kengen Limited.

iv) Monies at Equity Bank Account No. xxxxxxxxxxxx.

9. The only live issue is the distribution of the terminal benefits held at the Commercial Bank of Africa Visa Account No. xxxxxxxxxxxxxx and Account No. xxxxxxxxxxxx. It is not disputed that the protestor's son is entitled to a share. The amount of the terminal benefits is *unknown* and neither party has volunteered any useful information. The court is left in a blind spot. It follows that the claim by the protestor of Kshs 10,000,000 of those funds is *speculative*. The offer by the petitioner of 30% of the funds on the other hand is *unfair* considering that all the other properties are ending up in her hands.

10. Sections 26, 27, 28 and of the **Law of Succession Act** as read together with Rule 73 of the **Probate and Administration Rules** donate *complete discretion* to this court to order a specific share to a dependant. See generally **Re Estate of Morgan Njoroge Gakuo (Deceased)**, Nairobi High Court Cause No. 591 of 2007 [2016] eKLR.

11. It is not lost on me that the protestor had executed a *consent* to the proposed mode of distribution in the instant summons for confirmation of the grant. Nevertheless, and for the reasons in paragraphs 8 and 9 of this judgment, I find that the terminal benefits should be shared in *half* between the protestor and the petitioner. However, the protestor shall hold her share in trust for her son, Innocent Denva Mwea. That is the justice of the case.

12. For all those reasons, I order as follows:

a) That that the following four assets shall devolve wholly to the petitioner (*Mary Murugi Mwea*) –

i) Plot No. L.R. No. 11/1120/181, Sector B Nairobi.

ii) Land Parcel No. Loc. 10/ Wanjengi/1125.

iii) Ordinary shares in Kenya Airways Limited, Kenya Commercial Bank Limited, Kalamka Limited, Wangu Investment Company Limited and Kenya Electricity Generating Company (Kengen) Limited.

iv) Monies held at Equity Bank Account No. xxxxxxxxxxxx.

b) That the terminal benefits of the deceased held at the Commercial Bank of Africa Visa Account No. xxxxxxxx and Account No. xxxxxxxx shall be divided in *half*. The petitioner (*Mary Murugi Mwea*) shall have one of those halves wholly. The other half shall go to the protestor, *Lilian Njeri Mwangi*, who shall hold it in *trust* for her son, *Innocent Denva Mwea*.

c) That the grant issued to the petitioner on 11<sup>th</sup> December 2018 shall be confirmed in terms of this judgment.

d) That each party shall bear its own costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT MURANG'A THIS 27TH DAY OF JULY 2021.**

**KANYI KIMONDO**

**JUDGE**

**Judgment read in open court in the presence of:**

Mr. Macharia holding brief for Mr. Njiraini for the petitioner instructed by R. M. Njiraini & Company Advocates.

Mr. Waweru holding brief for Mr. Wandai for the protestor instructed by Karuga Wandai & Company Advocates.

Ms. Dorcas Waichuhi & Ms. Susan Waiganjo, Court Assistants.