



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 195 OF 2015

IN THE MATTER OF THE ESTATE OF STEPHEN P.

KAARIA alias STEPHEN PATRICK KAARIA (Deceased)

MARTHA KANANU KAARIA.....PETITIONER/APPLICANT

RULING

1. On 9th April 2019, the Court confirmed a grant of letters of administration with respect to the deceased estate. The Petitioner urges in the application dated 25th January 2021 that there has been difficulty in implementing the grant since the land registrar has refused to implement the same because the grant doesn't include the name of KM who is alive.

The Application

2. The application in essence seeks rectification of grant to remove the name of PM and to retain the name of KM. The Applicant urges that the physical attendance of KM be dispensed with since she is blind, deaf, bedridden and also senile and aged. She urges that PM is a son of KM and thus he cannot be bundled to the title while his mother is still alive.

Determination

3. This Court has observed from the confirmed grant that the only asset to be distributed is L.R No. NYAKI/KITHOKA/[...]. PM and KM were awarded $\frac{1}{4}$ acre thereof to hold jointly. The balance was awarded to the other 3 beneficiaries to hold jointly.

4. The Applicant through Counsel claims that the Lands Registrar has refused to implement the Confirmed Grant on the ground that PM is a son to KM and that there was a mistake in adding him as a beneficiary yet his mother is still alive. There was no question raised that the deceased was the father to PM, and that he is entitled to a share as a rightful heir.

5. It would appear that the Lands Registrar refused to implement the grant as it is on account of the spouse's life interest under section 35 of the Law of Succession Act which provides in part as follows:

“35. Where intestate has left one surviving spouse and child or children

(1) Subject to the provisions of [section 40](#), where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to—

a. the personal and household effects of the deceased absolutely; and

b. a life interest in the whole residue of the net intestate estate:

Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.

(2) A surviving spouse shall, during the continuation of the life interest provided by subsection (1), have a power of appointment of all or any part of the capital of the net intestate estate by way of gift taking immediate effect among the surviving child or children, but that power shall not be exercised by will nor in such manner as to take effect at any future date.

6. The **Report of the Commission on the Law of Succession, 1968**, at p.40-1 on which the section 35 is based established the widows right as follows:

“(b) Rights of Widows

134. ...

135. Many submissions we received around the country favoured giving specific inheritance to widows. Indeed, many witnesses, especially the women and women’s organizations, suggested that the wife should be the most important person as far as inheritance rights are concerned, first because it was partly through her efforts that the husband accumulated his wealth and secondly because she is in most cases the person who needs the property most. The only qualification was that she should forfeit these rights if she remarried. We fully agree with these submissions and we believe that the paramount purpose of the rules of succession should be to handover the deceased’s property to the person best likely to use it in the best interests of the deceased’s dependants. We believe this person to be the mother. We realize that some widows, especially in the rural areas, are still incapable of carrying out this task on their own but we are against giving the widow a fixed share. We would rather give her a life interest in the whole of her deceased husband’s free property until remarriage. We shall deal below with the principles upon which this life interest vested in the widow should be exercised.

RECOMMENDATION NO. 32

We recommend that on the death of a husband, a widow should have a life interest in the whole of his free property. We recommend further that this interest should cease if the widow remarries.”

7. However, where a widow has agreed through confirmation proceedings that the estate may be distributed in a certain manner which is manifested in the Confirmed grant of Letters of Administration, it must be taken that the court has considered the widow’s right to a life interest over the whole estate and deemed the portion going to the child as an appointment by the widow taking immediate effect in accordance with section 35 of the Law of Succession.

8. This Court observes that there is a letter from the Chief, Runogone Location which names PMR as a son to the deceased.

9. The essence of a succession matter is to ensure that all heirs to a deceased benefit from the estate of the deceased and as it appears from the documents on record, including the letter from the Chief, the said PM is one of them. The mother will have a life interest in the estate, and that may explain the distribution of the estate to her, during her life, and her son, jointly, and her life interest is given effect if her child were to predecease her, and, if she predeceased her child, her life interest is secured in accordance with the *jus accrescendi* principle.

ORDERS

10. Accordingly, for reasons set out above, the court makes the following orders: -

i) The Applicant’s application dated 25th January 2021 is allowed and the Lands Registrar is directed to implement the Certified Grant of Letters of Administration made by this court on 19th April 2019 in full.

ii) This being a family matter, there shall be no order as to costs.

Order accordingly.

DATED AND DELIVERED ON THIS 24TH DAY OF AUGUST, 2021.

EDWARD M. MURIITHI

JUDGE

Appearances

Elijah K. Ogoti & Co. Advocates for the Petitioner