



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1015 OF 2006

IN THE MATTER OF THE ESTATE OF LATE COL. FRANCIS MUSYOKA KIETI - (DECEASED)

LIZABETH MWIKALI KIETI.....APPLICANT

VERSUS

DIRECTOR OF PENSIONS (MINISTRY OF DEFENCE).....RESPONDENT

RULING

1. On 29th January 2019 Justice W. Musyoka found that the deceased Francis Musyoka Kieti died intestate on 13th December 2005 leaving a widow Anastacia Ndungu Mutangili with whom he had two sons Joseph Muli Kieti and David Mwanzia Kieti. Before his marriage to Anastacia, he had married Florence Kagendo Kieti with whom he got a daughter Lizabeth Mwikali Kieti (the applicant). Florence had pre-deceased him. The deceased left a mother Mwikali Muthiani.

2. The deceased died while serving as a colonel with the Kenya Armed Forces, and his family was therefore entitled to pension and death gratuity. The dispute is over the death gratuity, as pension is subject to a predetermined formula.

3. Justice W. Musyoka acknowledged that Anastacia had received Kshs.5,268,099.70 from Treasury. She had spent the money with her two sons. The court directed that –

“the death annuity from the Department of Defence is distributed as follows:-

(i) a lump sum payment of Kshs.400,000/= to Mwikali Muthiani;

(ii) 65% of the balance to Anastacia Ndunge Mutangili, for her own benefit and that of her children; and

(iii) 35% of the balance to Elizabeth Mwikali Kieti.”

4. When the decree went to the Department of Defence they wrote to say they were not able to implement it as the death benefits had already been paid to Anastacia.

5. It is for that reason that the applicant filed the instant application dated 8th March 2021 seeking the review of the judgment and decree of the court. According to her, the death benefits due to the deceased were Kshs.10,536,199/30. If one takes away the Kshs.400,000/= exgratia to the deceased’s mother, the balance is Kshs.10,136,099. That is the amount that should be shared 65%:35% between Anastacia and her. If the Kshs.5,268,098/= that Anastacia had received, what she should get is Kshs.1,320,429/85. That leaves Kshs.3,547,669/75 which the applicant should get. She filed this application seeking the review and setting aside of the judgment of 29th January 2019 (delivered on 15th February 2019) to rework the benefits as outlined in her application and supporting affidavit. Anastacia opposed the application. Her case was that the only available money, according to her, was pension to her and the deceased’s children and that such pension would not be available in any other manner.

6. The application indicated that the respondent was Director of Pensions (Ministry of Defence). Anastacia was not the respondent, although she filed a response.

7. There is no indication that the respondent was served, as there is no response from him. The Ministry of Defence would be the only one

to swear an affidavit to indicate what problems they have with the decree. Secondly, the Ministry should indicate whether, after the payment of Kshs.5,268,099/70 to Anastacia, there is any remaining benefit that would be the subject of the decree.

8. Until there is such indication from the Ministry of Defence, this application is not allowable. However, on further explanation from the Ministry of Defence the application shall be reinstated and determined on merits.

9. I make no order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF OCTOBER 2021.

A.O. MUCHELULE

JUDGE