



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 1667 OF 2018
IN THE MATTER OF THE ESTATE OF DR. RASHID JUMA RAVASCO (DECEASED)
BETTY LAURA RASHID RASHID...PETITIONER/APPLICANT

VERSUS

KENYA MEDICAL RESEARCH INSTITUTE.....RESPONDENT

AND

LYDIA MUHONJA OTIENO.....1ST OBJECTOR

LINDA JALENGA RASHID.....2ND OBJECTOR

RULING

1. Section 36A of the Retirement Benefits Act (Cap. 197) provides that: -

“Upon the death of a member of a scheme, the benefits payable from the scheme shall not form part of the estate of the member for the purpose of administration and shall be paid out by the trustees in accordance with the scheme rules.”

2. When the petitioner/applicant Betty Laura Rashid petitioned for the grant of letters of administration intestate in respect of the estate of her late husband Rashid Juma Ravasco, she indicated the deceased’s death gratuity and pension at KEMRI were part of the estate of the deceased. The deceased was a professor at KEMRI when he died on 17th January 2016. The grant was issued to her on 13th May 2019 and confirmed on 5th November 2019. The petitioner had petitioned as the widow of the deceased and indicated the children to be Zena Atetwe Rashid, Sheila Endekwa Rashid and Salim Mulwale Rashid. The four shared the death gratuity and pension, so that each child was to get Kshs.1,000,000/= and the petitioner was to get the balance. The deceased’s other properties were:-

- a) KJD/Kaputiei-North/13272;
- b) KJD/Kaputiei-North/13273;
- c) KJD/Kaputiei-North/13274;
- d) KJD/Kaputiei-North/13275;
- e) Land at Gambogi; and
- f) Motor vehicle KAC 360K.

The family shared these properties.

3. In the application dated 17th July 2020 by the petitioner, she asked for an order that KEMRI (Kenya Medical Research Institute) be

ordered to release the death benefits owing to the deceased to her to be shared in accordance with the certificate of confirmation. She indicated in the supporting affidavit that she had written to KEMRI who had failed to remit the benefits to her.

4. The response by KEMRI was contained in the notice of preliminary objection dated 10th September 2020 that stated that the application was incompetent, misconceived, bad in law and fatally defective on the basis that the petitioner ought not to have made such benefits the subject of the petition to administer the estate of the deceased. The objectors Lydia Muhonja Otieno and Linda Jalenga Rashid supported the objection.

5. The Retirement Benefits Authority provides for the establishment of retirement benefits schemes, regulates their operations, and provides for the mechanisms of resolving disputes arising from the operations of such schemes (**Kenya Commercial Bank Staff Retirement (D.C.) Scheme 2006 and Another –v- Ann Wangui Ngugi and 524 Others [2018]eKLR**). Under **section 46** of the **Act**, any member of a scheme who is dissatisfied with the manager, administrator, custodian or trustees of the scheme may request, in writing, that such decision be reviewed by the Chief Executive Officer of the Retirement Benefits Authority with a view of ensuring that such decision is made in accordance with the provisions of the relevant scheme rules or under the **Act** under which the scheme is made. **Section 47** sets up the Appeals Tribunal, and **section 48(1)** provides that any person aggrieved by the decision of the Authority or of the Chief Executive Officer has the right to appeal to the Tribunal within 30 days of the decision. By **section 48(2)** of the **Act**, any dispute between any person and the Authority as to the exercise of the powers under the **Act** is also appealable to the Tribunal. This dispute resolution mechanism under the **Act** has to be exhausted before one can invoke the jurisdiction of the court (**Geoffrey Mithinja & Another –v- Emmanuel Muguna Henry & 1756 Others [2015]eKLR**).

6. I accept that it was incompetent and against the provisions of the **Act** for the petitioner to include the death gratuity and pension of the deceased held by KEMRI as part of the estate of the deceased in the petition, and the certificate of confirmation. Such death gratuity and pension did not under **section 36A** of the **Act** form part of the estate of the deceased for purpose of the administration of his estate.

7. Consequently, the preliminary objection by KEMRI is hereby sustained with costs.

8. The next application is by the objectors who sought the revocation the grant that was issued and confirmed to the petitioner. The objectors allege that the petitioner did not disclose to the court that the 1st objector was the first widow of the deceased and that the 2nd objector was the daughter of the deceased; that their exclusion from the proceedings leading to the grant was deliberate and fraudulent and ended up disinheriting them. The petitioner's response was that she was the only widow of the deceased, and that her three children were the only children of the deceased.

9. In the affidavit in support of the application for revocation, the 1st objector annexed a copy of a form by the deceased in KEMRI Cooperative Savings and Credit Society Limited Kitengela Land Project (Plots) Application in which he declared her to be his wife and the 2nd objector as his daughter. He was declaring that the one acre plot he was going to get from the Project was going to go to the two. The 1st objector then annexed documents to show that the deceased saw the 2nd objector through school, both in Kenya and in the United Kingdom.

10. In the replying affidavit by Zena Atetwe Rashid, she stated that her late father had only one wife (the petitioner) whom he married on 12th February 1987 under the **Marriage Act (Cap 150)**. A certificate of marriage was annexed. The birth certificates of the children were also annexed.

11. The objectors' case was that the deceased and the 1st objector had been customarily married earlier, in 1982.

12. I am aware that the objectors had on 15th March 2019 filed an objection to the making of the grant. They were saying that they were legally entitled to the administration of the estate, being widow and daughter, respectively, of the deceased. The grant was issued on 13th May 2019.

13. I further note that the petition was gazetted on 22nd March 2019. It gave notice of 30 days from the date of publication. The notice of 15th March 2019 was therefore before the gazette notice. No objection was filed by the objectors after the gazette notice. I therefore consider the objection of 15th March 2019 to be of no legal consequence. Nonetheless, the petitioner knew that the objectors were laying a claim to the estate.

14. Under **section 76** of the **Act**, the objectors have sought the revocation of the grant and certificate of confirmation. Their interest has been stated in the application. The declarations by the deceased in respect of the objectors, and the contention that he was the one who had financed the education of the 2nd objector have not been materially challenged, I find. Secondly, I do not know whether the parcels indicated in the petition have any relationship with the plot that the deceased was buying for the objectors in the declarations annexed to the supporting affidavit. This is because he was buying one acre in Kitengela, and the affidavit in support of the petition also indicated one acre in Kitengela. The one acre later became KJD/Kaputiei-North/1372 to 1375.

15. The petitioner has a marriage certificate and therefore was entitled to petition for the grant. It is, however, evident that she knew that the objectors were laying a claim to the estate. I therefore consider this to be a dispute regarding whether the objectors are entitled to the estate of the deceased, and how much of the estate. It will also be interesting to know who the deceased nominated to benefit from his pension at KEMRI. If, for instance, it was to the objectors that will form part of their evidence that they had a relationship with him.

16. In conclusion, I will not revoke the grant issued on 13th May 2019. However, I will review the proceedings leading to the confirmation of the grant and recall the certificate of confirmation. This will enable the petitioner and the objectors be heard by oral evidence regarding the extent of the estate, whether the objectors are beneficiaries of the estate, and what the entitlement of the beneficiaries shall be. I make

these orders under **section 47** of the **Act** and **rule 73** of the **Probate and Administration Rules**. I am also alive to **section 3(5)** of the **Act** that provides as follows:-

“Notwithstanding the provisions of any other written law, a woman married under a system of law which permits polygamy is, where her husband has contracted a previous or subsequent monogamous marriage to another woman, nevertheless a wife for the purposes of this Act, and in particular sections 29 and 40 thereof, and her children are accordingly children within the meaning of this Act.”

17. In relation to the application dated 17th July 2020, I make no order as to costs.

DATED and DELIVERED electronically at NAIROBI this 28TH day of OCTOBER 2020.

A.O. MUCHELULE

JUDGE