



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2800 OF 2001

IN THE MATTER OF THE ESTATE OF PATRICK WARUIRU MUKUI

HANNAH WANJA WARUIRU.....APPLICANT

-VERSUS

ANNAH MWIHAKI WARUIRU.....RESPONDENT

RULING

1. The Deceased herein Patrick Waruiru died intestate on 25.6.2000.
2. The Respondent in the application dated 15/10/2018 coming for consideration in this ruling petitioned for grant of Letters of Administration and she was issued with the grant on 10.6.2009 and the grant was confirmed on 22.9.2010.
3. The applicant in the application dated 15.10.2018 subsequently applied successfully for revocation of the grant on the grounds that the grant was obtained by the concealment of material facts that she was also a widow of the deceased and entitled to a share of the Estate. The succession order is dated 26.6.2014.
4. The Respondent made an Application in the Court of Appeal for extension of time to Appeal against orders issued in the succession cause on 26.6.2016 and the court of Appeal dismissed that Application dated 6.2.2015. The Court of Appeal order is dated 19.10.2017.
5. The applicant is a wife of the deceased and there can be no question that she is entitled to inherit the estate of her deceased husband as a dependant within the meaning of the term 'dependant' as defined in section 29 of the Act as follows:

Meaning of dependant

For the purposes of this Part, "**dependant**" means—

- (a) The wife or wives, or former wife or wives, **and the children of the deceased whether or not maintained by the deceased immediately prior to his death;**
- (b) such of the deceased's parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
- (c) Where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death."

6. In the case of **Stephen Gitonga M'Murithi .v. Faith Ngira Murithi Nyeri CA No. 3 of 2015 (UR)**, the Court of Appeal delivered itself as follows:-

"The Appellant's complaint against the above mode of distribution is that it failed to take into account the clear principles of law enshrined in section 38 and 40 of the Law of Succession Act Cap 160 Laws of Kenya. Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried. Section 40 on the other hand enjoins the inclusion of a surviving spouse as an additional unit to each household of a polygamous deceased."

7. The Applicant has filed the Application dated 15.10.2018 seeking for the following orders:

(i) THAT the order of the Honourable Justice Kimaru dated 26.6.2014 be reviewed.

(ii) THAT the name of Annah Mwihaki Waruiru registered as owner of LR. NDARUGU/KARATU/1568 in trust of Wanja Waruiru, Margaret Wacheke Waruiru and Regina Njeri Waruiru on 27.3.2011 be cancelled and the tile to revert to the name of the deceased PATRICK WARUIRU STANELY MUKUI (Deceased).

(iii) THAT the sum of Kshs.66,050.3 taken as divided by Annah Mwihaki Waruiru from Kenya Tea Development authority from January 2002 to December 2017 be returned by her and be deposited in an interest earning account in the name of the Advocates for 2 women Hannah Wanja Waruiru and Annah Mwihaki Waruiru to await the Court.

(iv) That the Costs of this application be costs in the cause.

8. The parties filed written submissions which I have duly considered. The Applicant has stated in her written submissions that she has abandoned prayer (i) of the application dated 15.1.2018.

9. Concerning prayers (ii) to (iv) of the application, I find that Justice Kimaru already addressed the said issues in his Ruling dated 25.6.2014 in which he made a finding that the Applicant herein was a widow of the deceased.

10. I find that the Application dated 15.10.2018 is seeking prayers which were already granted. The Applicant should accordingly enforce the said orders.

11. For avoidance of doubt, I reiterate the orders issued on 26.6.2014 as follows.

(i) THAT the Court made a finding that HANNAH WANJA WARUIRU was a wife of the deceased and therefore a dependant of the deceased by virtue of section 29 (a) of the Law of Succession.

(ii) The grant issued to the Respondent on 10.6.2009 and confirmed on 22.9.2010 was revoked.

(iii) The Court ordered that a new grant be issued to the following:

a) HANNAH WANJA WARUIRU

b) ANNAH MWIKALI WARUIRU

(iv) The Court ordered that the properties belonging to Estate of the deceased PATRICK WARUIRU MUKUI (Deceased) which transferred to the Respondent ANNAH MWIHAKI WARUIRU pursuant to the revoked grant to be transferred back to the name of the deceased PATRICK WARUIRU MUKUI (Deceased) for redistribution.

(v) I find that there is no evidence that the Respondent was paid Ksh. 66,650.3 from Kenya Tea Development Authority and I decline to grant prayer (iii) of the Application dated 15.10.2018. The same will be considered at the stage of confirmation of grant.

(vi) The Costs of the Application will also abide in the Succession Cause.

(vii) Finally I direct that the two administrators to be issued with a fresh grant as directed by the Court.

(viii) The joint administrators are also directed to apply for confirmation of the said grant within 30 days upon being issued with the fresh grant and if they have already been issued, they are directed to apply for confirmation of grant within 30 days of this date.

(ix) Mention on 26.5.2019 for compliance and for directions.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 26TH DAY OF APRIL, 2019

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI