

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 145 OF 2018

IN THE MATTER OF THE ESTATE OF DANIEL KIPROP KENEY (DECEASED)

ZIBBORAH JEPKORIR TANUI.....APPLICANT

VERSUS

IRENE WANGARI NJOROGE.....1ST RESPONDENT

DERRICK KIPCHUMBA KENEY.....2ND RESPONDENT

RULING

1. The deceased Daniel Kiprop Keney died intestate on 4th June, 2017. Before his death he was employed by the Kenya Pipeline Company Limited. On 6th February, 2018 the 1st respondent Irene Wangari Njoroge and the 2nd respondent Derrick Kipchumba Keney petitioned the court for the joint grant of letters of administration intestate. It was the 1st respondent's case that she petitioned in her capacity as the widow of the deceased with whom she had two children, Kimberley Chepkemboi and Bradley Kimutai Keney. The 2nd respondent claimed to be a son of the deceased by another relationship. A joint grant was issued to them on 21st May 2018. The grant has not been confirmed.

2. It is not in dispute that the deceased was the son of the applicant Zibborah Jepkorir Tanui. He had four sisters. In the petition, the respondents did not indicate the name of the applicant (as mother of the deceased) and names of the sisters of the deceased and their addresses. This offended **Section 51(2)(g)** of the **Law of Succession Act** and **Rule 7 (1) (e)** of the **Probate and Administration Rules** both of which are in mandatory terms. From the affidavit sworn by the respondents in answer to the application by the applicant for the revocation of the grant, they were aware that the deceased had these relations. There is no indication that the respondents made the applicant aware that they were petitioning the court for the grant, and her consent was not sought or obtained. The applicant alleged that the grant was obtained fraudulently by the making of a false statement and the concealment of a matter material to the petition. I determine that the court was deliberately not made aware that the deceased had a mother and sisters, and this non-disclosure was fraudulent and intended to mislead and to disinherit.

3. On the basis of **Section 76** of the **Act**, and the decision in **Matheka and Another –Vs- Matheka [2005]I KLR 456**, I revoke the grant.

4. The applicant denied that the 1st respondent was the widow of the deceased. She, however, acknowledged the children of the deceased, including the 2nd respondent.

5. In relation to the dispute in **High Court Misc. Application No. 142 of 2018**, the applicant has no legal authority to sue the deceased's former employers over terminal benefits. She is not the executor of the will of the deceased, and neither does she have a grant in relation to the deceased's estate.

6. Further, according to the Trust Secretary/Administrator of Kenya Pipeline Company Retirement Benefits Scheme, the deceased was a member of the benefits scheme of the company. Under **Section 36A** of the **Retirement Benefits Act** the benefits payable upon the death of the deceased were not part of his estate, and were payable in accordance with the **Rules** under the **Act**. The deceased did not nominate the people to benefit under the scheme. The administrator therefore elected to pay the benefits to the respondents. Under **Section 46** of the **Act**, the applicant, if dissatisfied with the decision, was entitled to complain to the Chief Executive Officer of the Retirement Benefits Authority, and not come to court. Consequently, her application dated 5th November 2018 fails for want of jurisdiction.

7. In conclusion, and so that this matter does not delay, I issue a fresh joint grant in the names of Irene Wangari Njoroge, Derrick Kipchumba Keney and Zibborah Jepkorir Tanui. These grantees, or any of them, shall within sixty (60) days apply for the confirmation of the grant. During the confirmation of the grant the court will, on the evidence of either side, determine whether the 1st respondent was married to the deceased.

8. All the properties in the estate of the deceased shall be preserved.

DATED and DELIVERED at NAIROBI this 24TH day of SEPTEMBER, 2019.

A.O. MUCHELULE

JUDGE