



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 163 OF 2010

IN THE MATTER OF THE ESTATE OF THE LATE FREDRICK PIUS WAFULA - (DECEASED)

TUMAINI REGINA WAFULA.....APPLICANT

VERSES

ELIZABETH WAFULA - ADMINISTRATOR.....RESPONDENT

JUDGEMENT

1. The Respondent herein is the widow to the deceased and the administrator of his estate. She has filed the application dated 10th April, 2019 for the confirmation of the grant issued on the 13th October, 2010. In her supporting affidavit she has stated the deceased beneficiaries who are basically her 7 children and the properties left behind by the deceased.

2. Her proposed mode of distribution has been challenged by the Applicant who is her eldest child and she has done so vide her affidavit of protest sworn on the 10th June, 2019.

3. When the matter came up for hearing this court ordered that the same be disposed by way of written submissions which the parties complied except the applicant. The Respondent has equally responded through her replying affidavit sworn on the 15th June, 2019 as well as the supporting affidavit of her daughter **Rosalia, Defence, Naliaka** and **Silvia Wafula** in their joint sworn affidavit dated 2nd June, 2019. The said daughters have basically supported their mother and opposed what their sister has stated.

4. In a nutshell the Applicant is opposed to the proposed mode of distribution for the basic reason that her mother is remaining with the lion share of the estate whereas she is an adult and capable of controlling her affairs. She states further that she is a widow and has two college going children and she is unable to support them in their schooling as she does not earn much from the state law office where she is a prosecution counsel.

5. She further deponed that her mother has wasted the estate by selling a portion of the same, namely 30 acres which is contrary to the duties of an administrator. She said that the deceased relied on her legal expertise in relation to his businesses and farming. In a nutshell she said that she was an adult and she should be given her entire portion of the estate.

6. Having heard the parties and specifically the Applicant, what is clear is that the deceased was monogamous and there is no dispute regarding the identification of the beneficiaries. The properties left behind are clear and there is no dispute over them.

7. What then is the position of the administrator who happens to be a widow at the same time? That position is well captured by **Section 35 (1) of the Succession Act which provides that "Subject to Section 40 where an intestate has left one surviving spouse and a child or children the surviving spouse shall be entitled to:**

a) Personal and household effects of the deceased

b) A life interest in the whole residue of the net estate.

Provided that the whole residue of the net estate shall determine upon her remarriage to any person "

8. In the case at hand the respondent who is reported to be 70 years has not remarried. In light of the above provision she is entitled to the residue of the deceased estate. The drafters in my view were clear that these were properties accumulated by the deceased and his wife and consequently she has equal rights over them upon his demise.

9. There has never been any demonstration by the Applicant of her involvement in the acquisition of any of the properties left behind by her

father. Save to state that she was providing legal counsel to him in his businesses and farming though without any proof of the same, there is nothing much. Equally the Applicant has not demonstrated how the deceased supported her during his lifetime for example educating her children or any other direct support to them.

10. She alleges that her mother has wasted the estate by selling 30 acres thereof but that has been rebutted by her mother who stated through documentary proof that the agreement was rescinded as it was not enforceable and at any rate she attempted to do so so as to salvage the estate which was to be auctioned by AFC.

11. The court has perused the entire objection and it finds no merit in it. The mode of distribution by the administrator has not discriminated any of the children least of all the applicant. None has gotten more than the other. Unless the applicant demonstrated any advantage over the rest of her siblings who apparently are all adults I do not see any reason why she should claim more than the rest.

12. She is in fact lucky that at some point she was given Ksh. 830, 000 for her children education a fact which she has not denied. She now has a portion permanently bequeathed to her and she can work it and use for her benefit without nay let or hinder by anybody including her mother. Needless to state that the administrator has life interest only and she shall gether portion of the reminder of the estate after her demise. She should be patient.

13. Finally she is lucky to be in a formal employment and she earns an income. She should be able to plan just like every hard working Kenyan.

14. The objection is hereby disallowed with no orders as to costs. The application dated 10th April, 2019 is allowed as prayed and the mode of distribution thereof is granted.

Dated, signed and delivered at Kitale this 23rd day of September, 2019.

H. K. CHEMITEI

JUDGE

23/9/19

In the presence of:-

Bigundo holding brief for Onyinkwa Advocate for the Administrator

No appearance for the Objector

Court Assistant – Kirong

Judgment read in open court.