



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 7 OF 2017

IN THE MATTER OF THE ESTATE OF BENSON MURIUNGI (DECEASED)

ZIPPORAH MUKAMI1ST PETITIONER

VERSUS

EVANGELINE NGUGI2ND PETITIONER

J U D G M E N T

1. **BENSON MURIUNGI (“the deceased”)** died on 25th September, 2016. On 5th December, 2016 the Chief of Karia Location wrote a letter of introduction where he introduced the petitioners as the widows of the deceased.
2. On 7th February, 2018, the grant of letters of administration intestate was made to the two widows of the deceased, **Zipporah Mukami (“1st petitioner”)** and **Evangeline Ngugi (“2nd petitioner”)**. On 2nd March, 2018, the 1st petitioner applied for confirmation of the grant. She made her proposal on the distribution of the estate to which the 2nd petitioner protested vide her affidavit of 13th March 2018.
3. The protest was heard by way of *viva voce* evidence. **PW1** was the 2nd petitioner **Evangeline Ngugi**. She adopted her affidavit in protest and statement dated 11th April 2018 as her evidence. She stated that the vehicles **KBV 423K**, **KBC 227G** and **KAX 501R** were purchased by her and the deceased despite her not having the original log books. That the vehicles were originally in the deceased’s name but he transferred them to her. She stated that **KBV 423K** was transferred on 3rd November, 2015 and the other two on 24th March, 2016. With regard to the properties, she stated that she bought them together with the deceased.
4. **PW2 Jane Gaceri Kaaria**, a sister to the deceased adopted her statement dated 16th April 2018 as her evidence. She told the court that the 1st petitioner has three children while the 2nd petitioner has two. That during the lifetime of the deceased, Muriuki the son of the 1st petitioner used to operate motor vehicle **KBV 423K** while **Mugambi** the son of the 2nd petitioner operated motor vehicle **KBC 227C**. That the 2nd petitioner collects rent from the property in Gakoromone and that there were 3 farms in Kaaria measuring 1. 5, 0.5 and 1 acres, respectively. The farms have tea and coffee which is harvested by the 1st petitioner.
5. On her part, the 1st petitioner testified as **RW1** and did not call any witness. She adopted her affidavits on record and witness statement as her evidence. She stated that she is the one that uses the properties in Igoji. That the deceased had divided his properties while he was alive. He had divided his vehicles; one was to be held by **Muriki** her son and the other by **Dennis Mugambi**, the 2nd petitioner’s son. As regards the Gakoromone plot, he had showed the petitioners the places to be held by each of them.
6. Having considered the evidence on record, the issue for determination is, ***whether the deceased had shared his property during his lifetime; what constitutes the assets of the estate; and how the estate of the deceased ought to be distributed.***
7. All the immoveable properties are in the name of the deceased. They are all subject to distribution. However, that is not the case with the motor vehicles.
8. It was the testimony of the 2nd petitioner that, the deceased had given and transferred to her Motor Vehicle registration numbers **KBV 423K**, **KBC 227C** and **KAX 507 (“the motor vehicles”)**. She produced copies of log books for the said vehicles in support of her contention.
9. The 1st petitioner denied the 2nd petitioner’s contention, she testified, that during his lifetime the deceased had expressed the desire that two of the vehicles be operated by his two sons, one lorry by her son Muriuki and the other lorry by the 2nd petitioner’s son.

10. The evidence on record shows that the log books for the said vehicles are in the name of the 2nd petitioner. However, the 1st petitioner contended that the 2nd petitioner had transferred them to her name after the demise of the deceased. In this regard she produced records from the Kenya Revenue Authority and the National Transport Authority which showed that the said vehicles were transferred from the name of the deceased to the 2nd petitioner and registered on the following dates: -

- a) **KBC 227 G - 2nd December, 2016**
- b) **KBV 423K - 2nd December, 2016**
- c) **KAX 501R - 15TH March, 2017**

11. The 2nd petitioner did not produce any records from the Registrar of Motor Vehicles or the National Transport Authority to show that, as at 25th September, 2016 when the deceased died the vehicles had been transferred to her name. Indeed, her own witness **PW2 Jane Gaceri Kaaria** told the court that during his lifetime, the two lorries were being operated by his two sons, one from the 1st house and the other from the 2nd house.

12. In view of the foregoing, I make a finding that the three motor vehicles were still in the names of the deceased as at the time of his demise. That in transferring them to her name, the 2nd petitioner was not only acting dishonestly, but she had intermeddled with the estate contrary to the provisions of **section 45 of the Law of Succession Act, Cap 160 Laws of Kenya (“the Act”)**. Accordingly, the three vehicles form part of the estate and are available for distribution.

13. The next issue is what constitutes the estate of the deceased. From the evidence on record, the following is what constitutes the deceased’s estate and its value: -

- a) **Igoji/Kiangua/1965 - Ksh. 700,000/-**
- b) **Igoji/Kiangua/1403 - Ksh. 1,500,000/-**
- c) **Igoji/Kiangua/1497 - Ksh. 2,000,000/-**
- d) **Gakoromone Plot T/897 - Ksh. 9,000,000/-**
- e) **Nyaki/Mulathankari/3090 - Ksh. 4,500,000**
- f) **KAX 501R - Ksh. 260,000/-**
- g) **KBC 227G - Ksh. 1,520,000/-**
- h) **KBV 423K - Ksh. 2,300,000/-**
- i) **AC No. 135124109 - Barclays Bank**
- j) **AC No. 0140291379346 - Equity Bank**

14. Although the property known as **Meru Municipality Block 2/387** was listed as part of the estate of the deceased, the parties did not produce any evidence to show that the same was owned by the deceased. Accordingly, I will exclude the same from distribution. Once the parties are able to prove that the same was owned by the deceased, they can still come back to court for the necessary orders.

15. The final issue is, how should the estate be distributed? Each party advanced her own view how the estate should be distributed giving her own reasons therefor. On my part, I will take into consideration the following matters: -

- a) that the deceased was polygamous and had 2 houses;
- b) that the 1st house has 3 children while the 2nd house has 2 children;
- c) that each wife had her own matrimonial home which was fully developed;
- d) the value of each property;
- e) that the 2nd petitioner was in possession of all the three motor vehicles since the demise of the deceased until February, 2018;

f) that the 2nd petitioner has been collecting rent from the rental houses erected on **Gakoromone Plot No. T/897** ever since the demise of the deceased to date;

g) that the 2nd petitioner was ordered by Onginjo J on 29th March, 2017 to give account of all the proceeds for the use of Motor Vehicle Lorries reg. nos. **KBC 227G and KBV 423K** and the rent from the **Gakoromone Plot No. T/897** but up to the time of the hearing of this cause, she failed to do so without any explanation.

h) that both the petitioners preferred that the properties be distributed to them to hold on their behalf and on behalf of their respective children.

i) that the parties did not disclose the exact amount of cash held in the 2 accounts. Since the value of the properties are not enough, the first house will have a greater share of cash as compensation.

16. From the record, it is clear that the deceased had 2 houses. The first house comprises the 1st petitioner and her three children; **Benjamin Muthuri, Bernard Muriki and Susan Kainyu**. The 1st house therefore constitutes 4 units. The second house comprises of the 2nd petitioner and her two children; **Muriungi Dennis Mugambi and Benson Kaari Elizabeth**. The 2nd house therefore constitutes 3 units. The estate is to be divided into 7 units where applicable.

17. In this regard, the provisions of the law applicable is **section 40 of the Law of Succession Act**. Under the said provision, the estate is divided among the houses according to the number of children in each house with each child representing one unit. The wife is recognized as an additional independent unit.

17. Accordingly, the grant is hereby confirmed and the estate distributed as follows:-

a) Igoji/Kiangua/1497, 1465 and 1403 (Whole)

Zipporah Mukami to hold on her own behalf and on behalf of Benjamin Muthuri, Benard Muriki and Susan Kainyu in equal shares.

b) Gakoromone Plot No. T/897 (Half share)

Zipporah Mukami to hold on her own behalf and on behalf of Benjamin Muthuri, Benard Muriki and Susan Kainyu in equal shares.

c) Motor Vehicle Reg. No. KBV 423K

Zipporah Mukami

d) Nyaki/Mulathankari/3090 (Whole)

Evangeline Ngugi to hold on her own behalf and on behalf of Muriungi Dennis Mugambi and Benson Kaari Lizerelsa in equal shares

e) Gakoromone Plot No. T/897 (Half share)

Evangeline Ngugi to hold on her own behalf and on behalf of Muriungi Dennis Mugambi and Benson Kaari Lizerelsa in equal shares

f) Motor vehicle Reg. No. KBC 227G &

Motor Vehicle Reg. No. KAX 501R

Evangeline Ngugi

g) The Nett proceeds from A/C No. 135124109 Barclays Bank and A/C No.0140291378346 Equity Bank.

(i) Kshs. 167,350/= N-light Consultants Ltd

(ii) 5/6 - Zipporah Mukami for her own use and on behalf of her children

(iii) 1/6 - Evangeline Ngugi for her own use and on behalf of her children.

18. This being a family matter, I will make no order as to costs.

DATED and DELIVERED this 21st day of February, 2018.

A. MABEYA

JUDGE