



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 60 OF 2016

IN THE MATTER OF ESTATE OF EDWARD KATHURIMA MAGIRI (DECEASED)

LUCY KATHAMBI.....1ST PETITIONER

BONIFACE KINOTI.....2ND PETITIONER

VS

CHRISTINE NKATHA ELIJAH.....1ST OBJECTOR

SHUKE EDIN WAGO.....2ND OBJECTOR

RULING

The deceased herein died intestate on 29th December 2013 as per certificate of Death dated 17th February 2014. He was a Police Officer and therefore having died on duty death gratuity is due to his beneficiaries and/or dependants. He also owned parcel of Land No. Laikipia/ Muajiriri/6100 measuring 0.81 Ha. He owned a developed plot at Embakasi as well as L.R. Ngong/Ngong/2448; Motor vehicle Registration KBK 934 and held Accounts at Equity, Standard and Co-operative Banks.

Lucy Kathambi petitioned for Letter of Administration as the widow of the deceased and listed names of beneficiaries/dependants as provided for in chief's Letter Katheri Location dated 13th November 2014 but omitted the names of the objectors and Y J. The names in the letter were confirmed to the chief by elders John Bundi Magiri and Joseph Mboori. Letters of Administration were made to Lucy Kathambi Kathurima on 30th August 2016.

On 15th March 2017 the Administratrix filed summons for confirmation of grant and supported it by an affidavit sworn on 13th March 2017 proposing distribution of the estate. Christine Nkatha Elijah and Shuke Edwin filed affidavit protest to application for confirmation sworn on 24th April 2017 averring that they are also widow to the deceased and that they were opposed to mode of distribution proposed by the petitioner. They listed themselves as well as Lucy Kathambi as widows to the deceased. They also listed the children of the deceased:-

1. Muriuki Edwin

2. S M

3. Y J

4. Boniface Kinoti

5. Polly Nkirote

They argued that the estate of the deceased according to section 40 of the Law of Succession Act must be divided among the houses according to the number of children in each house. They claimed that the petitioner in collusion with their mother in law filed the cause secretly and didn't inform them or other interested parties as they have indicated they were never married to the deceased.

In reply to the protest Lucy Kathambi said Christine Nkatha was never a wife to the deceased and she only sired one son Edwin Muriuki with the deceased in or around 1985. She said she only saw Edwin during the deceased persons burial. She said the said Edwin will not require the father to rent for him a house as he is an adult.

She said Christine got married elsewhere and had children and that her said husband had since died. It was averred there was no proof the deceased used to pay rent for Christine. It was also argued that Edwin Muriuki was not in college and no proof had been given that he was in college. The petitioner said that the deceased was not father to Y J and there was no evidence the deceased used to support the said child. It was petitioner's case that Shuke had only one child S M with the deceased but were never married. She argued that application for confirmation should be heard and estate distributed and each to get shares of the estate.

The protesters filed proposed mode of distribution dated 27th April 2017 and filed on 27th April 2017 which was supported by Edwin Muriuki.

The Letter from Chief of Katheri Central Location identifies 3 widows, similar to the letter dated 14th October 2016 written by the Deputy Commissioner Meru Central Sub- County. However, Lucy Kathambi when testimony in court in her affidavit sworn on 23rd March 2017 averred that when she got married to the deceased she was made to know that the deceased had sired a child out of wedlock known as Edwin Muriuki but the mother was never married to the deceased. She averred at paragraph 6 that Christina Nkatha Elijah was married to another man who passed on and she got remarried.

In support of the claim by Lucy Kathambi that Christina Nkatha was never married to the deceased was the evidence of the deceased persons elder brother John Bundi Magiri and Francis Mutwiri retired Assistant Chief in the sub location where the deceased hailed from. They said that Christina Nkatha only came for the burial of the deceased. Christina did not respond to Lucy Kathambis claims that she had married another man who died and had remarried and the claim remains uncontroverted and coupled with evidence of John Bundi and Francis Mutwiri I do find that she was not the deceased persons wife.

Shuke Edwin was cohabiting with the deceased up until he died while undergoing treatment and John Bundi said that although they didn't recognise her as a wife they included her name so that the burial of the deceased could be peaceful and so that she could not wide the deceased persons documents.

It is acknowledge the deceased had taken in the said Shuke and had sired the child S M K with her. Although it is denied that Y J was fathered by the deceased it is apparent that the deceased catered for the upkeep of the said child and therefore the child qualifies to benefit from the estate. I do therefore find that Lucy Kathambi; Shuke Edwin, Boniface Kinoti, Polly Nkirote, S M and Y J are beneficiaries to the estate and the deceased persons mother was a dependant. The death gratuity shall be shared as follows:-

(A) 1. Lucy Kathambi – 10%

2. Boniface Kinoti – 15%

3. Polly Nkirote – 15%

4. Edwin Muriuki – 10%
5. Shuke Edwin – 10%
6. Y J – 15%
7. S M – 20%
8. Alice Gaiti Magiri – 5%

The deceased died before retirement and so did not qualify for pension and the wives will not therefore get the monthly pension for 5 years as submitted unless the regulation have changed which information of change is not in the knowledge of the court.

(B) The particulars of the Bank accounts at Equity, Standard Chartered, Co-operative Bank and Kenya Commercial Bank and amounts therein if any to be established by the DR before distribution.

(C) Motor vehicle Registration KBA 094 F protesters. The objectors/proposed that it should go to Edwin Muriuki whereas Lucy Kathambi proposes the motor vehicle to go to Polly Nkirote. The person in custody of the motor vehicle should avail it to court for valuation by the petitioner before the court can devolve it to anyone of the beneficiaries or have it sold and proceeds shared.

(D) This court also hereby orders that Lucy Kathambi and her children will retain L.R No. Ngong/Ngong/24481 located at Ongata Rongai in Kajiado County the respective guardians appointed by this court to share equally. The share for Polly Nkirote to be held on her behalf Lucy Kathambi and Boniface Kinoti. L.R Laikipia/Nyahururu/6180 to be held by Shuke Edwin and Edwin Muriuki in equal shares with Y J and S M. The share for Y J and S M to be held in Trust by Shuke Edwin and Edwin Muriuki.

Upon establishing particulars of the plot at Embakasi the same shall also be shared equally among the beneficiaries identified and the minors shares being held in Trust by the respective guardians appointed by this court.

HON. A.ONG'INJO

JUDGE

ORULING SIGNED, DELIVERED AND DATED THIS 23RD DAY OF MAY 2018.

In the presence:

Petitioner: N/A

Objector: N/A

Notice of ruling to issue to parties

HON. A.ONG'INJO

JUDGE