



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 129 OF 2015

IN THE MATTER OF ESTATE OF MARKSON KIMATHI MUTUMA (DECEASED)

BENSON MUTUMA MURIUNGI.....PETITIONER

VERSUS

CEO KENYA POLICE SACCO.....1ST RESPONDENT

SARAH KAGWIRIA.....2ND RESPONDENT

RULING

Markson Kimathi Mutuma died intestate on 1st February 2015 aged 26 years. He was an employee of National Police Service at the time of his demise but had not yet married. He was survived by both parents Benson Mutuma and Sarah Kagwiria Kwaria who are contesting the succession cause herein.

Benson Mutuma petitioned for grant of Letters of Administration. The deceased person net intestate estate is made up of :-

- a) L.R No.Abothuguchi/Kariene/3954
- b) Motor vehicle Registration KAQ 097 Y Toyota Saloon.
- c) Death Gratuity all estimated to be valued at Kshs. 500,000/-

The deceased person's mother didn't consent to the father taking out Letters of Administration. However, grant was made to Benson Mutuma Muriungi the deceased persons on 16th June 2015.

On 26th August 2015 the Administrator filed an application dated 24th April 2015 seeking that the Chief Executive Officer of Police Sacco Ltd and Sarah Kagwiria the mother to the deceased be committed to prison for intermeddling with the property of a deceased person namely Markson Kimathi Mutuma. He sought that the Respondents be ordered to deliver an up to date account of the deceased person's membership to the Sacco as from 1st February 2015 to date.

That the Respondents be ordered to reinstate any sum of money withdrawn from the deceased membership account no. 52188. The application was supported by the affidavit of Benson Mutuma Muriungi. This application was dismissed by Gikonyo J on 28th January 2016 on the ground that the deceased persons contributions to the Kenya Police Savings Sacco Society Ltd which duly registered and regulated under the Cooperative Societies Act Cap 490 Laws of Kenya which allows the society to pay monies due to a deceased member to a nominee a such other person who appears to be the personal representative for the deceased member.

Upon dismissal of the Administrators application the mother of the deceased filed summons for revocation of grant made to the father of the deceased. The application was compromised to the extent that on 15th November 2016 Grant of Letters of Administration was made to joint Administrators Benson Mutuma and Sarah Kagwiria.

Proposed modes of distribution of the estate were subsequently filed by each party followed by written submissions as parties agreed that the court looks at the statements filed and submissions and determine the cause.

In the 2nd Administrators submissions it was said that the parcel of land No. Abothuguchi/Kariene/2832 belonged to the deceased but that the deceased allowed the mother to engage a contract to put up the building upon it. It was also argued that the deceased had 2 brothers who were dependant on him and who were residing on the house in the parcel of land in question. It was argued that if 1st Administrator is given

the land he will only sell it for his own personal gain as he doesn't reside or carry any activity. It was further argued that it is 2nd Administrator who bore the brunt of the expenses incurred during the events following her son's death and in following the cause of Re-Beatrice K Amalemba [2002] eKLR she can't be ignored for selfish reasons by the 1st Administrator.

It was argued that 1st Administrator had converted Motor vehicle Registration KBA Toyota G-Touring which formed part of the deceased person's estate immediately the deceased was buried. 1st Administrator said she brought motor vehicle Registration KAQ 097 Y from EAASONS Constructions company and it does not form part of the estate of the deceased.

Concerning shares in Kenya Police Sacco Ltd it was submitted that the court had pronounced itself and it should not be revisited on death gratuity the 2nd Administrator said she should be made to hold in trust.

In reference to section 39 of the Law of Succession Act the 2nd Administrator argued that the mode of distribution should not only be equal but also reasonable.

Succession Cause No. 460 of 2002 – In the matter of the Estate of Wamuhu Murimi was also relied upon by 2nd Respondent in submissions. The 1st Administrators submissions on the other hand was that the deceased was not married and according to section 39 of the Law of Succession Act Cap 160 Laws of Kenya where the intestate has left two surviving spouse or children his net intestate estate shall devolve upon the kindred of the intestate in the following order of priority.

- a) Father, or if dead
- b) Mother or if dead

It was therefore, argued that being the deceased persons father having survived him the net intestate estate should devolve to the father who is 1st Administrator. It was submitted that the deceased net intestate estate comprised of:-

- a) Land Parcel No. Abothuguchi/Kariene/3954
- b) Motor vehicle Registration Number KAQ 097 Y
- c) Death Gratuity
- d) Other benefits
- e) Share in Kenya police Sacco Society Ltd.

The 2nd administrator has proved that motor vehicle Registration KAQ 097 Y does not form part of the estate. The 1st Respondent has not challenged that. The 1st Petitioner has also not challenged the fact that upon the marriage between him and 2nd Respondent being dissolved the 2nd Respondent prior to the demise of the deceased resided on parcel of land No. Abothuguchi/Kariene/3954 together with the 2 brothers of the deceased. The 2nd Administrator has proved beyond a shadow of doubt by use of supportive documentary exhibits in her pleadings that although the land which 1st Administrator claims he bought at Kshs 300,000/- was in the name of the deceased, she is the one who financed the construction of the building that the 2 valuers now valued at over Ksh5,000,000/. I have looked at the copy of the title deed and nothing shows that it was bought by 1st administrator and transferred to the deceased. The 1st Administrator does not deny that he chased 2nd Administrator from Matrimonial home. He doesn't deny that the 2nd Administrator resides at the plot in question and the chief of Mariene location has recorded a statement supporting the 2nd Administrators case. The deceased was the 1st Administrators son but it is quite telling that his remains were buried at the plot as opposed to 1st Administrators ancestral home.

It is also quite telling that despite the fact that 1st Administrator claims that he is the one who raised the deceased, the deceased chose to register the 2nd Administrator as his next of kin.

The 1st Administrator produced nothing to show the close tie he had with the deceased. In as much as S.39 of the law of Succession provides for net intestate estate to devolve upon the father in priority to the mother and although the 1st Administrators counsel has submitted for equal distribution of the estate I'm of the view that L.R. No. Abothuguchi/Kariene/3954 should devolve entirely on the 2nd Administrator to hold for herself and the 2 brothers of the deceased in equal shares as they resided there and therefore qualifying as his dependants.

The 2nd Administrator has actually pointed out rightly that the 1st Administrator's documents show he bought L.R No. Abothuguchi/Kariene 2832 and not 3954 which is the subject of the cause herein.

The 2nd Administrator has shown that she incurred expenses during the demise and burial of the deceased. The 1st Administrator has shown none. My view is that what should remain for distribution between the Administrators herein is the death gratuity which should take into account funeral expenses incurred by the 2nd Administrator. Upon such expenses being defrayed the gratuity to be shared equally between 1st and 2nd Administrator. I also order that each party bears their own costs of the cause considering it is a cause touching on parents of the deceased.

HON. A.ONG'INJO

JUDGE

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

HON. A.ONG'INJO

JUDGE

IN THE PRESENCE OF:

C/A: Penina

Petitioner: - Mrs Kithaka Advocate holding brief for Riungu Advocate for 1st Petitioner.

Objector: - Mr Mburugu Advocate for holding brief for 2nd Petitioner.

HON. A.ONG'INJO

JUDGE