



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

P & A NO. 13 OF 2018

IN THE MATTER OF THE ESTATE OF STEPHEN KIPRUTO KIPROP (DECEASED)

BETWEEN

PRISCILLA JEMATIA CHERONO)

DANIEL KIPROP CHERONO).....PETITIONER

AND

BETTY JEMUTAI KIMEIYWA.....RESPONDENT

RULING

1. The Petitioners urge that the widow, who according to section 66 of the Law of Succession Act is the person with priority for grant of Letters of Administration, is unsuitable because as a suspect and an accused in murder case KBT HCCR case No.09 of 2018, she is likely to waste the estate of her deceased husband. Section 96 of the Law of Succession Act is invoked.

2. The widow responds that the criminal charge of murder is still unproved and the principle of presumption of innocence works in her favour in resisting the petition, which she seeks that it be dismissed arguing that she has an adult daughter with the deceased with whom she can be appointed administratrix as of the estate. She prays that she be so appointed to enable her to continue with the duties and responsibilities of a surviving parent to her children with the deceased. The widow relies on the High Court decision in ***Re of DMG [2008] eKLR (Muchelule J.)*** emphasizing the priority of the spouse in relation to other persons interested in the estate of a deceased and for the proposal that “a criminal allegation that required proof beyond all reasonable doubt after a charge in a criminal court” could not be resolved in the forum of succession proceedings as to deny grant of Letters of Administration to the widow.

3. With respect, the circumstances of ***Re DMG***, supra, are distinguishable to the extent that the allegations of murder herein are crystalized in a formal charge against the widow in KBT HCCR. Case No 9 of 2018. ***Republic v. Betty Jemutai Kimeiywa***, and the prospect of a conviction setting, in the provision of section 96 of the Law of Succession Act prohibiting the inheritance of a sane murderer of a deceased person for the said deceased’s estate, calls for caution to ensure that the estate of a deceased is not recklessly exposed to waste by a person who upon full trial is found to be guilty of murder, and therefore, not entitled to inherit the deceased. A judicious consideration of the matter dictates that a person who may shortly upon trial be found guilty of murder and, therefore, disentitled to inherit should not be appointed an administratrix of the very estate that she would by law be prevented from inheriting.

4. That does not detract from the principle of presumption of innocence; it is only a cautionary step which is in the “final discretion” of the Succession Court in terms of section 66 of the Law of Succession Act which only prescribes a general guide on order of preference as follows:

66. Preference to be given to certain persons to administer where deceased died intestate when a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

(a) Surviving spouse or spouses, with or without association of other Beneficiaries;

(b) Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

(c) The Public Trustee; and

(d) Creditors:

Provided that, where there is partial intestacy, Letters of Administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.

5. Moreover, appointment of a neutral administratrix does not take away the right of the widow to inherit in the event that she is acquitted in the pending criminal case. The role of an administrator is to administer the estate and to distribute the estate upon identification of the assets and heirs, and payment of all debts and liabilities of the estate. It need not be done by a beneficiary to the estate, as is so often the case in estate administered by the Public Trustee.

Orders

6. In the circumstances of this case, the petitioners as brother and sister of the deceased being in the 2nd degree of Consanguinity under the Table of Consanguinity in 2nd Schedule of the P & A Rules (1980) must give way to the child of the deceased who is in the first degree. To protect any interest that the petitioners may have in their brother's estate, the court shall appoint one of them, as may be agreed, and failing agreement to be determined by the court, to join the adult daughter of the deceased in the administration of the estate in view of section 58 (1) of the Law of Succession Act which requires that more than one person be appointed administrator in cases where a continuing trust arises, as here because of the minor children. Accordingly, the petition by the Deceased's brother and sister for grant of Letters of Administration *Ad Colligenda Bona* is declined with no order as to costs.

Order Accordingly.

DATED AND DELIVERED ON THIS 28TH DAY OF AUGUST, 2018

EDWARD M. MURIITHI

JUDGE

Appearances:

M/S Nyagaka S.M & Co Advocates for the Petitioner

M/S Mathea Gikunju & Co Advocates for the Respondent