



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 573 OF 2003

IN THE ESTATE OF GERALD KIRAGU GATHERU (DECEASED)

ESTHER WARUKIRA MINJIRE Alias

ESTHER WARUKIRA KIRAGU.....APPLICANT

VERSUS

FRANCIAH NJOKI MWANGI.....RESPONDENT

R U L I N G

1. Before court is an application dated 23rd March 2017 brought by Esther Warukira against the Respondent Franciah Njoki Mwangi. The Applicant seeks to have the deceased gratuity in the sum of Kshs.882,892.30 which amount is in the hands of the Public Trustee be split and paid to each of his widows. She also seeks to have sum of Kshs. 548,594.90 be paid to her and for the Respondent to be paid the balance thereof of Kshs.274,297.45.

2. The application is predicated on grounds that the Respondent has failed to accompany the Applicant to receive the cheque payable to the estate and secondly the Applicant is in urgent need of the money for payment of school fees for one of her children.

3. In a response by way of a replying affidavit dated 20th March, 2017 the Respondent states that the proposed mode of sharing the gratuity is unfair as the deceased left behind several debts, she paid the hospital bill amounting to Kshs.95,000/- and further the Applicant had expended funds belonging to the estate and in a ruling dated 3rd November, 2006 the court had directed that moneys that may have been withdrawn by Applicant from the estate be accounted for or recovered at distribution.

4. Having considered the application, the response and annexures therein the issue before court is whether or not to grant orders that the Public Trustee pays out the gratuity and whether to adopt the mode proposed of distribution or not.

5. In the process of writing this ruling I was privileged to read the ruling of the court that was delivered on the 3rd of January 2006 and noted the contents thereof where the court observed that the deceased left behind two widows and 4 children. Secondly and rightly so the court applied **Section 40** of the **Law of Succession Act** in arriving at the decision.

6. Noting that the deceased had left 6 survivors and in line with **Section 40** of the **Law of Succession Act** both of the widows are wrong in assuming that the money belongs them as they do not mention any of the other survivors. The gratuity ought to be shared amongst all the beneficiaries of course, subject to any liabilities that may be proven.

7. The Respondent alluded to some expenses she incurred, made reference to receipts yet no such receipts were produced as annexures. Thirdly in line with the earlier ruling of the court the Applicant should and must account for monies used based on the earlier grant.

8. Consequently therefore, I direct and order:

(1) Details and ages of all the 6 beneficiaries be filed. Each widow may file details of her own house.

(2) The Applicant do file a statement of accounts as directed in the ruling of the court on 3rd January, 2006.

(3) Distribution will be done upon receipt of 1 and 2 above and final orders issued to the Public Trustee.

DATED, SIGNED and DELIVERED at NAIROBI this 22ND DAY OF November, 2018.

.....

ALI-ARONI

JUDGE