



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 2277 OF 2011
IN THE MATTER OF THE ESTATE OF C W M (DECEASED)
P W G.....1ST PETITIONER/APPLICANT
VERSUS
B N M.....2ND PETITIONER/RESPONDENT
JUDGMENT

1. The deceased CWM died intestate on 17th August 2011. On 17th October 2011 her daughter PWG and mother BNW filed this petition for the grant of letters of administration intestate. Those indicated to be her survivors were P and her sisters KMG and AAG (minor). The assets left by the deceased were:-

- (a) Nyeri/Municipality [particulars withheld];
- (b) Euaso Nyiro/Suguroi [particulars withheld];
- (c) motor vehicle registration number [particulars withheld];
- (d) 500 ordinary shares in [particulars withheld] Ltd;
- (e) block of hostels on plot [particulars withheld], a portion of LR No. [particulars withheld];
- (f) publication royalties at [particulars withheld] (Publishers) Ltd;
- (g) shares in [particulars withheld] Co-operative Society; and
- (h) shares in [particulars withheld] Star Ltd.

The grant was issued to the petitioners on 13th February 2012.

2. On 12th March 2013 the 1st petitioner (P) filed an application dated 25th February 2013 for the confirmation of the grant. She annexed a proposed mode of distribution of the estate to which KMG had consented. When the 2nd petitioner was served she swore a replying affidavit. She complained that the

1st petitioner had been administering the estate alone without reference to her; she had sold the vehicle and had not accounted for the proceeds; she had been paid Kshs.1,482,040/= and had not accounted for the money; was collecting rent from the hostels and had not accounted for it; and had been asked to provide audited accounts but had not heeded. She asked for the accounts, and stated that the deceased had left an oral Will indicating how she had wanted her estate to be shared. She went on to indicate the distribution according to that Will. What was significant about her affidavit was that the deceased had other properties which they had not indicated in the petition. These were her residence at Nikanini Farm [particulars withheld] cash at National Bank A/C [particulars withheld] and [particulars withheld] at Jomo Kenyatta University of Agriculture and Technology. On 7th October 2013 the 2nd petition made a formal application for accounts.

3. On 7th May 2014 the parties and their counsel (Mr. Muigai for the 1st petitioner and Mr. Chege for the 2nd petitioner) appeared before Justice Kimaru, and, following mediation, it was agreed as follows:

(a) L.R. No. Nyeri/Municipality [particulars withheld], shares in Ewaso Nyiro/Suguroi [particulars withheld] and Plot [particulars withheld] shall be registered in the names of PWG and BNM to hold in trust for the three children of the deceased, and the three properties shall not be sold or charged until the last child AAG reaches the age of majority;

(b) motor vehicle registration number KBR 825X shall be registered in the names of the three children of the deceased, and PWG to be refunded Kshs. 390,000/= by the estate;

(c) the sum paid by [particulars withheld] Sacco Society shall be invested with [particulars withheld] Financial Services for the education of AAG;

(d) the [particulars withheld] Bank of Kenya Ltd and the [particulars withheld] at Jomo Kenyatta University of Agriculture and Technology are ordered to supply the court with sums due to the account of the deceased;

(e) in case of [particulars withheld] Bank of Kenya Ltd Ruiru Branch A/C No[particulars withheld], [particulars withheld] Kenya (Publishers) Ltd should also supply to the court documents including how much royalties are payable for the books written by the deceased; and

(f) the matter be mentioned on 27th May 2014 for further directions.

The matter was mentioned severally until on 12th April 2016 when the parties agreed that the counsel file written submissions regarding the distribution of the balance of the estate. Mr. Muigai for the three children of the deceased filed the submissions.

4. It is now evident that the [particulars withheld] from Jomo Kenyatta University of Agriculture and Technology insured with [particulars withheld] Limited are Kshs.6,788,400/=; the National Branch A/C No.[particulars withheld] holds Kshs.650,472/38; and the accrued royalties as at 31st December 2013 held at [particulars withheld] (E.A.) Publishers Limited (the successors in title to [particulars withheld] Kenya (Publishers) Limited) with whom the deceased had a publishing contract are Kshs.1,607,686/52. Counsel submitted on behalf of his clients that, although under **section 38** of the **Law of Succession Act (Cap. 160)** the three children of the deceased were entitled to share the estate equally, the distribution should take into consideration the different education needs of the children. As a result, it was proposed that:

(a) the residence at Nikanini [particulars withheld] be registered in the names of PWG, KMG and BNM to hold in trust for the three children of the deceased;

(b) the shares of the deceased in [particulars withheld] Ltd and [particulars withheld] Limited be distributed equally to the three children of the deceased;

(c) 50% of the [particulars withheld] from JKUAT be set aside for the education of AAG, 25% for

the education of KMG, 15% for the education of PWG and 10% to shared equally among the three;

(d) Ksh.390,000/= be paid to PWG in refund for motor vehicle [particulars withheld] out of the funds held at A/C No.[particulars withheld] at Ruiru Branch of the [particulars withheld] Bank of Kenya, and the balance be equally shared among the three children;

(e) the royalties from [particulars withheld] (E.A.) Publishers, as successor in title of [particulars withheld] (Publishers) Limited net editing costs be shared equally among the three children;

(f) all monies allocated for the benefit of the minor AAG be invested with [particulars withheld] Services; and

(g) BNM be paid a gratuitous monthly sum of Kshs.5,000/= for maintenance out of the rents from the properties in the estate of the deceased for her entire lifetime.

5. When the 2nd administrator swore her replying affidavit on 10th April 2013 in answer to the application for confirmation of the grant, she proposed that the residence at Nikanini Farm [particulars withheld] shares in Euaso Nyiro/Suguroi [particulars withheld] and vehicle [particulars withheld] be transferred to her to hold in trust for AAG; Plot [particulars withheld] be transferred to KMG absolutely; Plot No. Nyeri/Municipality [particulars withheld] to be transferred to PWG absolutely; 500 shares in [particulars withheld], shares in [particulars withheld] Star Limited, royalties at [particulars withheld] (Publishers) Limited, cash at [particulars withheld] Bank of Kenya A/C No.[particulars withheld] and benefits in [particulars withheld] Society Limited be shared so that AAG gets 2/3 to be held in trust for her by her (the 2nd petitioner); and [particulars withheld] at JKUAT to be shared so she holds 60% in trust for AAG, PWG gets 15%, KMG gets 15% and she gets 10%. Lastly, she asked that the share of money allocated to the minor AAG be deposited in a trust fund in her name. She swore that this distribution represented the wishes of the deceased at the time of her death.

6. It is important to point out that when the petitioners petitioned for the grant it was on the basis that the deceased had died intestate. It was on the basis that the deceased had not left a Will, oral or written. When the 2nd petitioner now says that the deceased left an oral Will, that goes against her own pleading. Parties are bound by their own pleadings. Secondly, following a mediated settlement, there was a partial distribution of the estate on 7th May 2014. Parties cannot disengage or resile from that settlement. By that settlement, L.R. No. Nyeri/Municipality [particulars withheld], shares in Euaso Nyiro/Suguroi Block [particulars withheld] (Portion L.R.[particulars withheld] were to be registered in the joint names of the petitioners and KMG in trust for the three children of the deceased. The three properties were not to be sold or charged until AAG reaches the age of majority. Motor vehicle [particulars withheld] is to be registered in the name of the three children of the deceased, and the 1st petitioner to be refunded Kshs.390,000/= by the estate. The sum paid by [particulars withheld] Society Ltd (it was Kshs.1,482,040/=) was to be invested with [particulars withheld] Financial Services for the education of AAG. In regard to this amount, by affidavit dated 7th October 2013 by the 2nd petitioner she complained that the 1st petitioner had been paid the money and had not accounted for it. There was no response. I note that the said petitioner annexed to the affidavit a letter from the Society indicating that the 1st petitioner had collected a cheque of the amount from them. The cheque had been issued in the names of the 1st petitioner and KMG. It is not possible for P to have withdrawn the money alone. Karin has not said she did not see the cheque or money, and the two have not said that they gave the money to Angela.

7. The [particulars withheld] from JKUAT insured with Pioneer Assurance Limited are Kshs.6,788,400/=. The money shall be shared equally among the three children of the deceased so that each gets Kshs.2,262,800/=. What is due to AAG (Kshs.2,262,800/=) shall be invested at [particulars withheld] Financial Services until she is of age. The petitioner shall jointly operate the account, but there shall be no withdrawal until Angela is of age. Now that the 1st petitioner and Karin have not accounted for the [particulars withheld] Society Limited money, I direct that the accrued royalties at [particulars withheld] (EA) Publishers Limited, the successors in title to [particulars withheld] (Publishers) Limited of Kshs.1,607,606/52 shall be invested at [particulars withheld] Financial Services for the education of

AAG. The account shall be operated jointly by the petitioners. The National Bank of Kenya Ltd, Ruiru Branch A/C [particulars withheld] holds Kshs.650,472/38. Ksh.390,000/= of that shall go to the 1st petitioner (as had been indicted in the settlement above). The balance of Kshs.260,472/= shall go absolutely to the 2nd petitioner. The shares of the deceased in [particulars withheld] shall be shared equally among the three children of the deceased. The shares of AAG shall be registered in trust for her in the joint names of the petitioners. There is a block of hostels erected on Plot No. 95, a [particulars withheld]. Rent accrues from these hostels. Every month the 2nd petitioner shall draw Ksh.5,000/= and the rest shall be used for upkeep and education of the three children of the deceased. Similarly, any future royalties from [particulars withheld] (E.A.) Publishers Ltd shall be used for the upkeep and education of the children of the deceased.

8. In those terms, the grant of letters of administration intestate in respect of the deceased CWM issued to the petitioners on 13th February 2012 is hereby confirmed.

DATED and DELIVERED at NAIROBI this 30th JANUARY 2017

A.O. MUCHELULE

JUDGE