



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO. 600 OF 2015

IN THE MATTER OF THE ESTATE OF GODFREY KAGWARA KINUTHIA (DECEASED)

MARY NYAKERU KAGWARA.....IST PETITIONER

SAMUEL NGIGI KAGWARA.....2ND PETITIONER

VERSUS

FELICITA NJERI KIHU.....PROTESTER

RULING

By way of a summons dated 1/8/12, Felicita Njeri Kahiu (hereinafter the applicant) seeks orders:

1. That no grant having been confirmed, such reasonable provision be now made for the applicant as a dependant of the deceased out of his net estate as the court thinks fit.
2. That costs of the application be provided for.

The facts laid before the Court on oath vide the applicants sworn affidavit in support of the application are that the applicant is a wife to the deceased having married him under Kikuyu customary Law in 1955. Dowry was paid. The 2 cohabited as man and wife at Ndeiya Division, Ringut village.

The deceased married a 2nd wife in 1972 by the name Mary Nyakeru (Ist petitioner herein). The applicant thus claims to be a dependant within the meaning of section 29 of the Law of succession Act. She avers that she had no children with the deceased but depended on his estate for the upkeep and maintenance.

She lists the properties of the deceased as:

- a. **Title No. NYANDARUA/NDARAGWA KIANJOGU BLOCK 1/492 measuring 0.908 hectares.**
- b. **Title No. NYANDARUA/KIANJOGU BLOCK 1/537 measuring 3.491 hectares.**
- c. **Title No. NYANDARUA/MELWA BLOCK 1/2173 (MUHOTETU0 measuring 4.320 hectares.**
- d. **House No. 188, SITE 7 SERVICE SCHEME, PHASE 11, KAKAMEGA MUNICIPALITY.**

Her present needs are housing, shelter, clothing and future needs are land on which she can do farming, build a house and earn an income on which to sustain herself.

No gifts were given to her by the deceased during his lifetime. Despite evidence of proper service, there is no response to the application.

I have had occasion to consider the application, the supporting affidavit and the applicable law.

Under section 26 of the law of succession Act, the Court is empowered to make reasonable provision for a dependant.

A dependant within the meaning of **Section 29 of the Law of Succession Act**, includes the wife or wives, or former wife or wives of the deceased.

The applicant has tendered evidence that she was a wife to the deceased under Kikuyu customary law. This fact is not controverted. I thus agree with the applicant that as a widow of the deceased she is entitled to a share of her husband's estate available for distribution. I do, however, retain the power to weigh the conflicting needs of heirs and determine what provision should be made to the applicant. I find that there is sufficient evidence on record to warrant me to find that reasonable provision should be made to the applicant.

The applicant has listed the properties of the deceased as:

- a. **Title No. NYANDARUA/NDARAGWA KIANJOGU BLOCK 1/492 measuring 0.908 hectares.**
- b. **Title No. NYANDARUA/KIANJOGU BLOCK 1/537 measuring 3.491 hectares.**
- c. **Title No. NYANDARUA/MELWA BLOCK 1/2173 (MUHOTETU) measuring 4.320h.**
- d. **House No. 188, SITE 7 SERVICE SCHEME, PHASE 11, KAKAMEGA MUNICIPALITY.**

The exact values of these properties are not readily discernable now that no valuations have been done.

Following with approval the findings of (Aluoch J) in H. C. Succession case No. 2195 of 1994 and which decision was upheld in civil appeal No. 313 of 2001, Phyllis Njoki -vs – Peter Karanja (2009) eKLR, in the absence of certainty of the value of the entire estate, it is difficult to make a direct provision at this stage.

I have found from the evidence that the applicant is a wife to the deceased. This means the deceased had 2 wives. The succession to the deceased estate should then be by way of consideration of houses taking into account the number of children in each household and considering the surviving widows as units in distribution of the estate.

These issues to be dealt with at the confirmation stage.

Dated, signed, and Delivered at Nakuru this 31st day of August, 2016.

A.K. NDUNG'U

JUDGE