

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1324 OF 2013

IN THE MATTER OF THE ESTATE OF FAITH MUITA (DECEASED)

RULING

1. The application I am called upon to determine is dated 8th October 2013. It seeks a variety of orders. It concerns funds due from an insurance policy that has matured and the funds released to the respondents who are said to have refused to pay the same to the administrators of the estate of the deceased, who was one of the persons the subject of the group insurance policy.

2. The respondents have resisted the application. Their primary argument is that the funds in question do not accrue to the estate of the deceased for they never formed part of her free property which she could will away as she pleased. They urge that the matter is not the subject of the Law of Succession Act, Cap 160, Laws of Kenya, but of the Insurance Act, Cap 487, Laws of Kenya. It is their case that the issue of intermeddling with estate funds does therefore not arise.

3. When the matter was placed before me on 25th May 2015 the parties proposed to dispose of it by way of written submissions. I granted their request and directed them to file their respective written submissions within given timelines. The parties did file their respective written submissions which I have had occasion to peruse.

4. It is common ground that the funds the subject of these proceedings was subject to a nomination. The said nomination appears as an unnumbered annexure to the affidavit of the applicant sworn on an unknown date in 2013, but filed in court on 8th October 2013. The document in question is headed 'Group Life Assurance Beneficiary Nomination Form.' In it, the member of the group assurance scheme, the deceased herein, names the beneficiaries of the policy should it accrue. The names indicated are of E K and Isabella M, her son and her mother, respectively. It is signed by both the member and a representative of the employer. As one of the dependants or nominees is a child, the deceased nominated CM, her sister, as the guardian of the minor for the purposes of the nomination.

5. Is money that accrues to a nominee named in an insurance policy payable to the estate of the member of the insurance scheme? I should think the answer to that question is in the negative. The funds would not be due to the deceased or her estate, but to the persons she has named as the beneficiaries of the scheme. The persons named in the nomination form as beneficiaries, are the persons to whom the assured funds ought to be paid in the event the policy matured upon the death of the member. Clearly, the nominated funds were not payable to the deceased or to her estate. Upon her death, the assured sum was to be paid to the person she had nominated, in this case E K and I M.

6. Nominations are devices that operate outside of the law of succession. A nomination is defined (see Parry and Clark: *The Law of Succession*, 11th edition, Thomson/Sweet & Maxwell, London, 2002 pg. 4 and Catherine Rendell: *Law of Succession*, Macmillan, London, 1997 pgs. 10 and 11) as a direction given by a nominator to another person or entity who or which is holding funds on her behalf, to pay the funds on the nominator's death to a nominee appointed by the nominator during the nominator's lifetime. The nomination or direction by the nominator only takes effect after the death of the nominator.

7. One other thing to note about nominations is that they operate under the rules of a particular scheme. Although they dispose of property upon death, they do not comply with the requirements of a will, and they are therefore not subject to the law of succession. The property the subject of a nomination does not form part of the nominator's estate, for the reason that the funds are meant to be paid to the nominee of

the nominator. The person to whom the funds ought to be paid is designated. Nominated funds cannot pass by the will of the nominator. The said funds, the subject of the nomination, cannot vest in the personal representatives of the nominator for the simple reason that they do not form part his or her estate. It is for that reason that the person holding the funds, or the scheme manager, need not require a grant of representation before paying out the funds to the nominee or beneficiaries. The direction is that the funds be paid out on death, so the person holding the funds should only require proof of death before making the payment.

8. The only time nominated funds would fall for distribution in accordance with the law of succession is when the nomination has been revoked by either the subsequent marriage of the nominator or by the death of the nominee before that of the nominator. In both cases there would be no valid nomination, and therefore no nominee would be in place to be paid the proceeds of the policy. In such cases the funds would be estate property vesting in the administrators. Where the nominee dies after the nominator's death, the nomination would still be valid, and the funds would accrue to the estate of the nominee, and would vest in the nominee's personal representatives.

9. In the instant case, the nomination dated 14th May 2012 was a direction given to the Jubilee Insurance Company of Kenya Limited, which was holding funds on behalf of the deceased in an insurance scheme arranged by her employer, to pay those funds on her death to E K and I M. So for all purposes the funds in question were nominated to the two, and that that very act removed the said funds from the reach of the estate of the deceased, and from the application of the law of succession. As mentioned above, nominations operate under the rules of a particular scheme. In this case, this was an insurance scheme. The rules governing the scheme are to be found in the Insurance Act. A party facing any difficulties with the operations of the scheme, particularly with the processing of claims, ideally should pursue their claim through the channels put in place by the Insurance Act.

10. I must state that no evidence has been furnished to the effect that the nominations of E K and I M had been revoked, either by the subsequent marriage of the deceased or by the death of either or both nominees. All pointers are that the two (2) nominees are still alive, healthy and hearty, and entitled to be paid what is due to them under the nomination.

11. Certainly, this is not a probate matter. The funds being fought over do not form part of the estate of the deceased. They do not vest in the administrators appointed herein to administer the estate of the deceased. Disputes over such funds should not be entertained in this cause. The applicants are better off pursuing a remedy, if they have any, elsewhere.

12. In view of what I have stated so far, I need not comment on the negotiations that took place between the applicants and the respondents, culminating in the agreement signed between them on 9th July 2013, lest I prejudice the outcome of any other proceedings that the applicants may be minded to mount elsewhere. Neither will I comment on whether the respondents are entitled to the 'claw back' for the same reasons.

13. The application dated 8th October 2013 is misconceived and wholly without merit, for the reasons that I have advanced above. I hereby dismiss it, with costs to the respondents.

DATED, SIGNED and DELIVERED at NAIROBI this 26TH DAY OF OCTOBER, 2016.

W. MUSYOKA

JUDGE