

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 2431 OF 2012

IN THE MATTER OF THE ESTATE OF KIENJE KIBUGI MUTESEMBURA- (DECEASED)

RULING

1. The administrators of the estate of the deceased moved the court on 15th October 2013, by an application dated 14th October 2013, for confirmation of the grant made to them on 5th April 2013.
2. The affidavit sworn in support of the application on 14th October 2013 indicates that the deceased was survived by seven children, but no spouse. He died possessed of three (3) assets. The administrators propose that two of the assets be shared equally among the surviving children of the deceased, while one asset be sold and the proceeds of sale be utilized to meet the expenses of administration with the balance being shared equally between the survivors.
3. One of the survivors, Joseph Njuguna Ndirangu, does not support the proposed distribution and he swore an affidavit on 31st October 2013. He raises two principal issues. He states that his father had prior to his death given directions on how one of the assets was to be shared between him and his brother, Isaack Njenga Ndirangu. Secondly, he says his sisters are married, and they are therefore not entitled to a share in the estate of the deceased.
4. I note from the record that this cause commenced by way of petition for grant of letters of administration intestate on the grounds that the deceased had died on 25th April 1997 intestate. The protestor, Joseph Njuguna Ndirangu, did not object to the petition. He did not then challenge the application on the grounds that the deceased had died testate for he had prior to death given directions on how his estate was to be distributed. He cannot in my view now turn around and allege that the deceased had left directions on how his property was to be dealt with after his death. He has not provided any proof of any such directions or wishes.
5. The deceased died after the Law of Succession Act had come into force in 1981. His estate therefore is for administration under the provisions of the Law of Succession Act. He died intestate and hailed from Kiambu County. His estate is for distribution under Part V of the Law of Succession Act which governs intestate succession.
6. He was survived by children, but no spouse. Devolution in the circumstances is governed by Section 38 of the Law of Succession Act, which provides as follows:-

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of Sections 41 and 42, devolve upon the surviving spouse if there be only one, or be equally divided among the surviving children.”
7. The reference to children in **Section 38** of the Act does not make a distinction between male and female children, nor does it make reference to their marital status. The effect of this is that the estate of an intestate dying after the commencement of the Act is to be distributed equally amongst all the children of the deceased regardless of their gender and marital status. For avoidance of doubt, I state that estate is to be distributed amongst the sons and daughters of the deceased regardless of their marital status.
8. In view of the above, and especially the statutory provisions of **Section 38** of the Act, there is no merit

in the protest by Joseph Njuguna Ndirangu.

9. I find that the proposals by the administrators in the application dated 14th October 2013 are in consonance with the provisions of Section 38 of the Law of Succession Act. Consequently, I do hereby allow the application as prayed. Costs shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 30th DAY OF January 2015.

W. MUSYOKA

JUDGE