



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 2663 OF 2009**

**IN THE MATTER OF THE ESTATE OF ZACHARY SOLOMON AMBITA (DECEASED)**

**CAROLINE NDUGURI GEORGE.....APPLICANT**

**VERSUS**

**ANN MURUNGARI KIRUTHI.....1<sup>ST</sup> RESPONDENT**

**PETER KHAEMBA MOCHENGO.....2<sup>ND</sup> RESPONDENT**

**J U D G M E N T**

**PLEADINGS**

The deceased Zachary Solomon Ambita died on 24<sup>th</sup> June, 2008. Ann Murungarui Kiruthi and Caroline Nduguri George obtained confirmation of grants separately to administer the estate of the deceased.

The matter was canvassed before Kimaru J culminating to the judgment delivered on 29<sup>th</sup> April, 2014. The import was;

- a. The grant of letters of administration intestate separately granted in the 2 succession cause were revoked and the certificate of confirmation of grants similarly revoked.
- b. A new grant was issued to both wives of the deceased and to file summons for confirmation of grant within 30 days.

**WRITTEN SUBMISSION**

Ann Murungari Kiruthi filed the proposal on mode of distribution through Counsel Mr. Mogeni on 28<sup>th</sup> April, 2014. She proposed:

- a. Title Number Nyandarua/Muruai/1044 measuring 2.43 hectares to be equally distributed among the four beneficiaries
- b. Liberal Business Agencies Share Certificate No. 5 and 10 was sold off by Caroline Ndunguru George and the same should be considered as advancement from the estate.
- c. Co-operative Bank cash deposits and Barclays Bank of Kenya Ltd Account No. *[particulars withheld]* Ksh. 238,304/= Caroline Ndunguru George – already received to be considered as an advancement from the estate.

Caroline Ndunguru George filed submission through her advocate on 18<sup>th</sup> November, 2014 and further affidavit on 10<sup>th</sup> November, 2014 and proposed; **ISSUE**

- a. What mode of distribution is fair and equitable to the beneficiaries of the estate of the deceased?

## **PROPOSALS**

The matter was before this Court concerns the distribution of the estate of the deceased pursuant to the judgment of this Court rendered on 29 April 2014. In that judgment, the Court determined that the estate of the deceased should be distributed and shared between the 4 dependants of the deceased, namely Caroline Nduguri George (the applicant), Eunice Muthoni, Ann Murungari Kiruthi and Mary Njeri. The Court also recognized Ann Murungari Kiruthi as a co-administrator of the deceased's estate. Further, the Court directed Caroline Nduguri Njeri and Ann Murungari Kiruthi to apply for confirmation of the grant and propose a mode of distribution of the estate.

Subsequently, on 6 June 2014, Caroline Nduguri George (the applicant in the present case) made an application for confirmation of the grant and proposed that the estate of the deceased should be distributed and shared as follows:

<b><u>PROPERTY</u></b>	<b><u>BENEFICIARY</u></b>	<b><u>SHARE</u></b>
Land No. Nyandarua/Maruai 1044	Caroline Nduguri	2 Ha
	Eunice Muthoni	0.43 Ha
Hotel & Restaurant, Liberal Business	Ann Murungari	50%
	Mary Njeri	50%
Household goods	Ann Murungari	Whole share
Employment benefits	Caroline Nduguri	Ksh 600, 000
	Eunice Muthoni	Ksh 300, 000
	Ann Murungari	Ksh 100, 000
	Mary Njeri	Ksh 100, 000

On 4 July 2014, the 1<sup>st</sup> respondent and co-administrator of the estate, Ann Murungari Kiruthi, filed an affidavit of protest denouncing the mode of distribution suggested above. She categorically stated that the applicant had mismanaged the estate and therefore should not be entitled to inherit. In her written submissions, the 1<sup>st</sup> respondent argued that the proposal put forth by her co-administrator could not stand for the following reasons:

- i. On obtaining the confirmation of the grant, the applicant proceeded to collect an unknown amount from Co-operative Bank for which she has never accounted.
- ii. The applicant collected Ksh 238, 304 from Barclays Bank account no. *[particulars withheld]* for which she has never accounted,
- iii. The amount of monies received by the applicant should be considered as advancement from the estate of the deceased.

On the basis of the foregoing, the 1<sup>st</sup> respondent proposed an alternative mode of distribution of the estate, which she stated would be most appropriate. Her proposal was as follows:

- i. Land Registration Nyandarua/Muruai 1044, 2.43 Ha should be distributed in equal shares to the four beneficiaries.
- ii. The hotel and restaurant business, namely Liberal Business Agencies share certificate no. 5 and

- 10, which was sold off by the applicant should be considered as an advancement from the estate of the deceased.
- iii. The monies received by the applicant from Co-operative Bank and Ksh 238, 304 from Barclays Bank should be considered as an advancement from the estate.
  - iv. The employment benefits of the deceased should be equally shared between the beneficiaries, excluding the applicant.

In response, the applicant filed a further affidavit to clarify some of the issues raised by the 1<sup>st</sup> respondent and highlighted in her submissions what the Court should consider when deciding the appropriate mode of distribution. The applicant pointed out that:

- i. The applicant was married to the deceased under Statute while the 1<sup>st</sup> respondent only presumed to be a wife after the demise of the deceased and only be the Court.
- ii. The applicant got the grant issued to her and got it confirmed before touching any assets of the estate.
- iii. The applicant has given an account of how she used the little portion of estate following the confirmation of the grant. She used it to offset expenses of the estate, to pay school fees and medical bills for the deceased's daughter, and then preserved the rest to enable determination.
- iv. The 1<sup>st</sup> respondent took all the household effects, which are valuable by any standards, but has never accounted for them.
- v. The 1<sup>st</sup> respondent sold off a successful restaurant business constituting part of the estates and has never accounted for it.
- vi. The 1<sup>st</sup> respondent continues to derive rental income from property of the estate but refuses to account for the same.
- vii. The 1<sup>st</sup> respondent has committed forgeries in respect of estate, including forgeries of consent and signatures of the deceased's parents. Hence, she cannot be trusted to give a balanced and neutral account.

In view of the above points which the applicant urges the Court to take into account, the applicant submitted as follows:

- i. The applicant is entitled to a higher share because she is the rightful and lawful wife of the deceased while the 1<sup>st</sup> respondent is a wife strictly for purposes of the law of succession. The Court should consider that that the applicant bears the burden of the family and therefore warrant a higher share of the estate.
- ii. The 1<sup>st</sup> respondent deserves a minimal share because she squandered valuable assets. The Court should treat what she has already taken as part of her share and thus allocate to her what is reasonably necessary in view of the circumstances of remaining dependants.
- iii. The principle to be applied is section 40 Law of Succession Act and hence the Court should distribute the estate equally as proposed by the applicant. Equal distribution does not, however, mean that the Court should ignore the huge estate already squandered by the 1<sup>st</sup> respondent; instead, the portion already used and not accounted for be treated as part of her share. If this is followed, the mode of distribution will remain reasonable and fair.

## **EVALUATION**

The wives and children of the deceased were confirmed vide the judgment of 29<sup>th</sup> April, 2014 therefore Section 40 of the Law of Succession Act will apply when the intestate deceased person was polygamous.

***“where an interstate has married more than once under any system of law pertaining polygamy, his personal and household effects and the residue of net intestate estate shall, in the first instance he divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children”.***

In the instant case we have four (4) units two (2) wives and two (2) children. The properties comprising

of the deceased's estate are;

1. Title Number Nyandarua/Muruai/No. 1044 2.63 hectares
2. Hotel and Restaurant business & equipment (under business name Liberal Agencies)
3. Household goods and effects
4. Employment Benefits held by Public Trustee
5. Co-operative Bank of Kenya Ltd Account proceeds
6. Barclays Bank of Kenya Ltd Account proceeds

From the evidence on record;

1. Carolline Nduguri George withdrew proceeds from **Barclays Bank of Kenya** and **Co-operative Bank of Kenya** alleged to be at Ksh.321, 304/= but no documentary evidence on the bank balance was provided to the Court.
2. Ann Murungari Kiruthi took over all household and personal effects of the deceased which were not disclosed to the Court and sold the business under style and name of **Liberal Agencies**. Again, the proceeds from the sale have not been disclosed to the Court.
3. The above four (4) assets will be taken into account and considered to be an advancement to each of the two (2) beneficiaries of the estate of the deceased.
4. The remaining assets are the Title Number Nyandarua/Muruai/1044 2.43 hectares

It should be surveyed by a surveyor and subdivided into four (4) equal units for each of the beneficiaries of the estate of the deceased as by **Section 40 of Law of Succession Act** or it is valued by valuer sold and proceeds shared equally by the four (4) beneficiaries.

5. The Public Trustee, Employment Benefits, Benevolent/Provident Funds to be shared among the four (4) beneficiaries in the following ratios; 25% each to the four (4) beneficiaries. The minor child has reached the age of majority.

**READ AND SIGNED IN THE PRESENCE OF:**

Mr. Mohamed for Mr. Amol.

**DATED AT NAIROBI THIS 29<sup>TH</sup> DAY OF JANUARY, 2015**

**M. MUIGAI**

**JUDGE**