



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 3100 OF 2001

IN THE MATTER OF THE ESTATE OF MUNYUA MBEKE (DECEASED)

JUDGMENT

1. The application the subject of this judgment is dated 21<sup>st</sup> May 2014. It is premised on Sections 24 and 26 of the Law of Succession Act, Cap 160, Laws of Kenya, and it seeks that reasonable provision be made to Monicah Waithera Munyua out of the estate of the deceased, Munyua Mbeke. The applicant Monicah Waithera Munyua, is not a daughter of the deceased, but an estranged or former wife of one of the sons of the deceased called David Mbeke Kanyoro.
2. The persons who qualify to make applications under Section 26 of the Law of Succession Act are defined in Section 29 of the said Act, which provides as follows-

**“For the purposes of this Part, ‘dependant’ means-**

- a. **The wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;**
  - b. **Such of the deceased’s parents, step-parents, grandparents, grandchildren, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and**
  - c. **Where the deceased was a woman, her husband if he was being maintained by her, immediately prior to the date of her death.”**
3. The clear wording of Section 29 of the Act does not include daughters in law of the deceased. Daughters in law are not children of the deceased, and therefore they do not fall within the category of the children of the deceased. They therefore cannot mount an application under Section 26 of the Act as the applicant has done in this case.
  4. In intestacy, daughters in law are not classified among the survivors of the deceased and they therefore have no claim in intestacy to the estate of the deceased. None of the provisions of Part V of the Law of Succession Act identify daughters in law as survivors of a dead father in law or mother in law. They can only access the estate of such in-laws through their husbands or their children. Intestate succession is based on blood kinship. A person who is not related to the deceased by blood cannot access the estate of such person, unless they are children formally adopted by the deceased under the Children Act, Cap 144, Laws of Kenya.
  5. It transpires that the applicant’s husband is alive and well. His name is David Mbeke Kanyoro. He is one of the survivors of the deceased and therefore one of the heirs to that estate. The applicant can only claim for maintenance by David Mbeke Kanyoro, but not out of the estate of her alleged deceased father in law, Munyua Mbeke.
  6. It also transpires that the grant on record has been confirmed. There is on record a certificate of confirmation of grant dated 4<sup>th</sup> June 2007, rectified on 30<sup>th</sup> November 2010. According to Section 30 of the Law of Succession Act, no application under Section 26 should be brought after the grant in the cause in respect of the subject estate has been confirmed as provided under Section 71.
  7. The conclusion to draw from the above is that the applicant has no legal standing to bring an

application under Section 26 of the Law of Succession Act, for she is not, as a daughter in law, a dependant of the deceased as envisaged by Section 29. Secondly, even if she had standing, which she does not have, the application would still be incompetent for it would be statute-barred by virtue of Section 30 of the Act.

8. Consequently, the application dated 21<sup>st</sup> May 2014 exists for one purpose only, that of being dismissed for incompetence. I do hereby dismiss the same. The administrators shall have costs of the application.

**DATED, SIGNED and DELIVERED at NAIROBI this 25<sup>TH</sup> DAY OF SEPTEMBER, 2015.**

**W. MUSYOKA**

**JUDGE**