



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**PROBATE AND ADMINISTRATION**  
**SUCCESSION CAUSE NO. 718 OF 2012**  
**IN THE MATTER OF THE ESTATE OF D W R**

**RULING**

1. This is a Summons for Confirmation of Grant dated 17<sup>th</sup> March, 2014. It seeks orders that the grant of letters of administration intestate made to C M R and J W K in this matter on 12<sup>th</sup> July 2013 be confirmed.
2. The application is supported by the annexed affidavit of J W K, one of the administrators of the said estate, sworn on even date. The deceased was survived by C M R, K A R, J W K, N G R, and I W R. There are no other dependants and that no application for provision for dependants is pending. The identification and shares of all persons beneficially entitled to the said estate have been ascertained and determined.
3. To that application, C M R, the other administrator, filed an affidavit of protest against confirmation of grant on 23<sup>rd</sup> April 2014. He protests to the distribution of the estate as proposed in the affidavit of J W K in support of Summons for Confirmation sworn on 17<sup>th</sup> March, 2014. He argues that the said application has been made without his consent as a co-administrator, and the consent in writing of the other beneficiaries of the estate. It is averred that he is the spouse of the deceased herein and therefore entitled to a life interest in the estate. He states that the estate cannot be divided or distributed among the children while he is still alive. It is his proposal that the grant be confirmed on the terms that he has a life interest in all the properties listed in paragraph 5 (a) to (h).
4. On 30<sup>th</sup> April, 2014, the parties were directed to file written submissions.
5. I note from the record that the applicant filed her written submissions on 27<sup>th</sup> May 2014. The protestor did not file written submissions.
6. It is the applicant's proposal that the deceased's estate be distributed equally amongst all the deceased's four children and the surviving spouse, with the exception of the assets listed in paragraphs 5 (d) & (e) comprised of money in the deceased's various bank accounts and shares in several listed companies respectively.
7. It is further submitted that, for the purpose of the estate, one of the issues for determination would be whether or not the protestor is entitled to the deceased's personal effects and household goods that were in the deceased's home at Garden Estate at the time of her death. They submit that the deceased left the matrimonial home in the late 1990s to live on her own in another house she had

constructed at Garden Estate. It is submitted that the said house could not have been the matrimonial home; hence the surviving spouse is not entitled to the household goods and personal effects therein. He would only be entitled to the personal effects and household goods that were left in the matrimonial home where he continued living. They contend that the deceased's personal effects and household goods should be distributed equally amongst the deceased's four children.

8. On the protestor's contention that the net estate cannot be divided amongst the beneficiaries whilst he is still alive, they submit that case law is replete with instances where the courts have distributed real property between a surviving spouse and children equally, save that the surviving spouse receives their portion in trust for the children, since his only has a life interest, while the children receive their portion absolutely as they are the intended beneficiaries.
9. Having carefully considered the application, the affidavit in support, the affidavit in protest and the submission by the applicant, together with the authorities cited, I form the view that the only issue for determination is whether the protestor is entitled to the deceased's personal effects and household goods as well as the money in the deceased's bank accounts and shares.
10. The Law of Succession Act grants certain rights to the surviving spouse. Succession on intestacy, where a deceased person has left a spouse and surviving children, is provided for under section 35(1) of the Act, which provides that –

**“35 Subject to the provisions of section 40, where an intestate has left -**

**(1). One surviving spouse and a child or children, the surviving spouse should be entitled to –**

- a. **the personal effects and household effects of the deceased absolutely; and**
- b. **A life interest in the whole residue of the net intestate estate. Provided that if the surviving spouse is a widow, that interest shall determine upon her remarriage to any person.’**

11. Arising from the above provisions of the law, it is noticeable that a surviving spouse takes all the personal effects of the deceased absolutely, but has a life interest on the net residue of the estate. It therefore follows that the property over which the surviving spouse holds a life interest does not pass absolutely to the surviving spouse, but is held by such surviving spouse in trust for the children of the deceased. Ideally, the estate should be held in trust since there is life interest, however the circumstances of the case would merit the distribution of the estate directly to all the survivors of the deceased.

12. The applicant has contended that at the time of her death, the deceased was not living with the surviving spouse, and that the deceased was living on her own in another house she had constructed at Garden Estate. However, there is nothing brought before this court to prove that the deceased and Mr. C M R, the protestor herein, had legally separated. From the facts of this case, although the two appeared to have had differences and the seeming differences occasioned their living apart, the deceased was survived by the protestor as a widower a fact that is recognized by the applicant. Indeed, a grant of letters of administration intestate of the said estate was made to him, as one of the administrators on 12<sup>th</sup> July, 2013. It goes without saying that the said C M R is the surviving spouse of the deceased. Being the surviving spouse, he is entitled in law to the personal and household effects of the deceased absolutely, whether or not they are to be found at the matrimonial home.

13. Accordingly, this court holds that the surviving spouse herein shall be entitled to the personal and household effects of the deceased absolutely. The monies in the bank accounts and shares shall be distributed as proposed in the mode of distribution at paragraph 5 (d) and (e).

**DATED, SIGNED and DELIVERED at NAIROBI this 26<sup>th</sup> DAY OF September, 2014.**

**W. MUSYOKA**

**JUDGE**