



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION NO. 583 OF 2007

IN THE MATTER OF THE ESTATE OF DOMINIC MUTHANGYA NYAMBU (DECEASED)

JULIETTA MAWIA MUTHANGYA.....PETITIONER

VERSUS

ROSE NYEGERA NYAMBU.....1ST OBJECTOR

ANN MWIKALI MUTHANGYA.....2ND OBJECTOR

NICHOLAS MUTUMA NYAMBU.....3RD OBJECTOR

RULING

1. Dominic Muthangya Nyambu died on 4th August 2006.
2. Julietta Mawia Muthangya the widow of the deceased filed a petition for letters of administration intestate on 13/3/2007.
3. The grant was advertised in the Kenya Gazette of 27/4/2007.
4. The other widow; Rose Nyegera Nyambu, Ann Mwikali Muthangya and Nicholas Mutuma Nyambu filed on 23/6/2007 notice of objection to making of grant on grounds that the wife and children of the deceased from another home were left out, some assets were not included and the family extended is entitled to ½ share of the deceased's estate.
5. On 8/8/2008, the objectors filed a cross application for grant of letters administrator intestate. They also filed an answer to petition of the same dated 8/8/2008.
6. On 8/4/2011 the Petitioner filed a written statement and list of documents. She attached the affidavit of the deceased sworn on 19/11/1993 and affidavit sworn on 31/3/2000. Attached is the Marriage Certificate of marriage between the deceased and the Petitioner.
7. On 18/5/2011 the objector, filed a written statement and list of documents. She attached Minutes of family meeting of 18/11/2006, letter from the Chief dated 11/2/2006 and the supporting affidavit of the mother of the deceased of 18/9/2008.
8. On 22/9/2014 the Lawyer for the Petitioner Mr. Kabarú informed the Court the the matter was to

proceed on the basis of cross examination of the parties based on affidavit filed in Court. The objector and his advocate did not attend Court or adduce any reasons to be considered by the Court. The Petitioner's Lawyer asked that the Court based on the pleadings filed determine the issue of appointment of the administrator.

9. The Court has carefully read and considered the issue at hand which is for now who is/are the administrator(s) of the estate of the deceased and thereafter determination of the beneficiaries/defendants to the estate, relevant consents to the mode of distribution of the estate of the deceased.

10. The gist of the matter is that from the Petitioner's stand point, she is the legally married wife of the deceased as evidenced by the Marriage Certificate No. 75662, a marriage solemnized under the Marriage Act Cap 150 (repealed).

11. There are 2 children of the marriage Selina Mwendu Muthangya and Anne Kiseye Muthangya. The affidavit of the deceased of 19/11/1993, confirms that he married the Petitioner under Kamba Customary Law on 14/7/86. The deceased's affidavit of 31/3/2000, the deceased he married the 1st objector Rose Nyegera Nyambu in 1980 under Meru Customary Law and they parted in 1983 and had two (2) children who he admitted were from him and are his children. He claimed that the 1st objector should have no share of his property or claim at all.

12. With regard to the children though /admittedly/ his, he stated in the affidavit that they were over 18 years and therefore he was not responsible for them financially or otherwise.

13. The objector's position is that they are the other family of deceased. Although they separated from the deceased, there was no divorce between the deceased, and 1st objector.

14. There is the affidavit of the mother of the deceased who deponed that the family of the objector belonged to the deceased and he lived at Nairobi with the 1st objector and in Mwingi with the Petitioner. The objectors have alluded to the fact that a family meeting was held on 18/11/2006 and both the families were recognized and agreed on possible mode of distribution of the deceased's estate. The objectors allege that the terminal benefits of the deceased were in the list of assets. They have also alleged that the children of the Petitioner were not the deceased's biological children.

The upshot of all the allegations as pleaded in the pleadings the Court will rely on the following;

- a. The letter of the Chief dated 11/12/2006 identifying children of the deceased from both mothers and acknowledging both women as wives of the deceased.
- b. The minutes of the family meeting held on 18/11/2006, which shows that the two (2) families were identified and recognized as the family of the deceased in the presence of the area Chief and elders.
- c. The affidavit of the mother of the deceased of the deceased who stated that both families belonged to her late son and deceased in this case. The property was from the deceased's late father, her husband except for his terminal dues.

The three (3) above mentioned documents confirm that the deceased had two (2) families. Let me mention the issue regarding the affidavit sworn by the deceased on 31/3/2000 in paragraph 3, the deceased recognized and acknowledged the two (2) children of the 1st objector as her own children and his blood children. Although in paragraph 8, he absolved himself of any financial responsibility for the two (2) children as they were over 18 years the deceased did not exclude them from inheriting his estate. In fact paragraph six (6) the deceased was in contact with the third (3rd) objector.

This affidavit was in possession of the Petitioner. It is suspicious and peculiar that the affidavit is in the possession of the Petitioner yet it is related to 1st objector and deceased. Secondly it is deleted in some parts and not countersigned and dated. I am not satisfied that the affidavit and the contents was originally

from the deceased and if so it was deponed.

The Court has its misgivings about it. The Law of Succession provides for beneficiaries and dependants as legally obtaining property from the estate of the deceased. Since there is enough evidence to strongly suggest that the deceased had two (2) families by virtue of Section 29(a) of the Law of Succession Act cap 160 the Court will allow a joint grant between the Petitioner and the third (3rd) Objector, so that in the administration of the estate of the deceased both families are equally represented.

The Court grants orders as following;

1. Under Section 66 of the Law Succession Act Cap 160, I declare the Petitioner Julietta Mawia Muthangya and Nicholas Mutuma Nyambu joint administrators of the estate of Dominic Muthangya Nyambu.
2. The joint administrator's role is to collect and gather all the assets of the deceased and identify the liabilities and carry out duties as outlined in Section 83 of Law of Succession Act Cap 160.
3. Thereafter the administrators shall apply for confirmation of grant wherein the issue of beneficiaries/dependants shall be confirmed, the assets and mode of distribution determined.
4. No orders as to costs each party to bear its own costs.
5. The Chief, elders and family members play the limited role of bringing the disputants together and explore amicable settlement but the final distribution of the estate of the deceased rests with the order of the Court as provided in Section 71 of Law of Succession Act.

READ AND SIGNED AT NAIROBI THIS 29TH DAY OF OCTOBER, 2014.

M. MUIGAI

JUDGE

In the presence of:

Mr. Kabaru for the Petitioner and Mr. Nganga for the Objector.