

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.16 OF 1988

IN THE MATTER OF THE ESTATE OF LABAN KINGORI MACHARIA (DECEASED)

ZAWERIA WANGARI KINGORIAPPLICANT

VERSUS

JOHN MWANGI KING'ORIRESPONDENT

RULING

On 26th April 2013, this court distributed the properties that comprised the estate of the deceased to the beneficiaries. The beneficiaries agreed that the distribution will be made on the basis of the three (3) houses of the deceased in accordance with the last Will of the deceased. The Applicant and the Respondent are from the 1st house. The Applicant now complains that the Respondent has excluded her from benefitting from the share due to her mother's house. She filed an application seeking orders of this court to compel the Respondent to identify the respective shares of his sisters so that the said shares can be distributed to them. The Applicant was apprehensive that if the court did not make such appropriate orders as prayed in her application, the Respondent would exclude them from benefitting from the estate. The application is opposed. It is the Respondent's case that, the Applicant, being married, was not entitled to inherit any properties that comprised the estate of the deceased.

During the hearing of the application, this court heard oral rival submission made by Mrs. Ngugi for the Applicant and Mr. Chege for the Respondent. The issue for determination by this court is whether the Applicant is a dependant of the deceased and whether she is entitled to benefit from his estate. In the distribution that was made by the court on 26th April 2013, the court directed that members of each house would benefit equally from their share as ordered by the court. This direction was issued on the basis of **Section 29(a)** of the **Law of Succession Act** that recognizes children of the deceased, whether male or female, whether married or unmarried, as dependants of the deceased. Further, **Section 38** of the **Law of Succession Act** provides that:

“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 child, if there be only one, or be equally divided among the surviving children.”

Article 27 of the **Constitution** prohibits against discrimination of any person before the law. Specifically, **Article 27(3)** provides thus:

“Women and men have the right to equal treatment, including the right to equal opportunities in political, economic and cultural spheres.”

Sub-Article 4 specifically provides as follows:

“The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.”

The Judiciary is a State organ. The courts are therefore prohibited, unless reasonable cause is shown, from treating any person in a discriminatory manner. The Respondent proposes that the Applicant be

discriminated from inheriting the estate of her father on the basis that she is married. That constitutes discrimination on the basis of marital status. The Respondent has not established any reasonable cause why the Applicant should not benefit from the estate of her late father as earlier ordered by the court. This court therefore directs that the properties that shall be inherited by the 1st house shall be distributed equally among all the children of that house irrespective of whether they are sons or daughters, married or unmarried. Where any of the dependants is deceased, and if such dependant has children, then the said children will inherit the share of their deceased parent. It is so ordered.

DATED AT NAIROBI THIS 29TH DAY OF OCTOBER 2014

L. KIMARU

JUDGE