



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Succession Cause 843 of 2009

IN THE MATTER OF THE ESTATE OF STANLEY RUNGU KARIENYE (DECEASED)

RULING

Stanley Rungu Karienyne, whose estate is the subject of these proceedings, died on 5th July 2008. Representation to his estate was sought by his daughter, Rosemary Wambui Muite, and a grant of letters of administration intestate was made to her on 20th November 2009.

In her petition filed in court on 9th April 2009, she listed five (5) persons as the survivors of the deceased, being his one (1) son and four (4) daughters, namely:-

1. Pauline A. W. Rungu
2. Rosemary Wangui Muite
3. Susan W. Rungu
4. Margaret W. Rungu
5. Nicholus N. Rungu

There are two (2) letters from the chief on record to support the petition. One, dated 25th July 2008, from the assistant chief of Lusoi sub location; the other, dated 3rd July 2009 from the chief of Kiganjo location. Both identify the five (5) survivors, but add a sixth one, Grace G. Rungu. She is described in the letter of 3rd July 2009 as a divorced wife. There is also a copy of record of marriage from the office of the city clerk of the City of Lowell in the Commonwealth of Massachusetts, USA which shows that the said Grace G. Rungu contracted a civil marriage on 22nd December 2000 with one Norman J. Emond. She is described in the record as divorced, and the said marriage as a second one.

The administrator of the estate, Rosemary Wangui Muite, on 19th August 2010 filed a Summons for Confirmation of Grant, dated 18th August 2010. The said summons was purported by amended on 19th May 2011. The application is supported by several affidavits and consents. There is a consent dated 2nd July 2012, signed by among others, Grace Gathoni Rungu, which carries a schedule of assets of the estate and the proposed distribution. Among the affidavits is that sworn by the said Grace Gathoni Rungu on 16th July 2012 before a Notary Public. Grace G. Rungu has been allotted a property in the estate known as Ngong/Ngong/32328.

Grace Gathoni Rungu, as at the time of the deceased's demise on 5th July 2008, had been divorced from the deceased. Indeed, she was then the wife of another man. She was not a spouse of the deceased on the day he died, and she cannot possibly be said to be his surviving spouse. The issue that arises is whether she is entitled to a share in the estate of her former husband.

Since the deceased died intestate, the law that governs his estate is Part V of the Law of Succession Act. The provisions which are relevant to the situation in this matter are **Sections 35** and **38** of the Law of Succession Act. **Section 35** caters for the circumstances where the deceased is survived by one surviving spouse and child or children. **Section 38** caters for the situation where deceased has left a surviving child or children, but no spouse. With respect to the estate of Stanley Rungu Karienyee, **Section 38** applies. He was not survived by a spouse, since Grace Gathoni had long divorced him and married someone else, and therefore his estate fell for distribution among his surviving children.

That being the position, it is contravention of **Sections 35** and **38** of the Law of Succession Act to propose devolution of the estate of the deceased to a person who is not entitled to a share in the estate. The only circumstance where a former spouse would get a share in the estate of his or her deceased former spouse is where such former spouse has moved the court under **Section 26** of the Law of Succession Act and the court has ordered that provision be made for such former spouse out of the estate of her former husband or wife. No such order has been obtained in this matter, and there is therefore no legal basis for allotting a property out of the estate of the deceased to Grace Gathoni Rungu.

I will allow the application dated 19th May 2011 and confirm the grant made to Rosemary W. Muite. I confirm the proposed devolution of the estate of the deceased upon the surviving children of the deceased, but not the distribution of Ngong/Ngong/32328 to Grace Gathoni Rungu as she is not a surviving spouse of the deceased person.

It is so ordered.

W. Musyoka

Judge

DATED, SIGNED and DELIVERED at NAIROBI this 21st DAY OF FEBRUARY, 2013.