



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO. 502 OF 1995

IN THE MATTER OF THE ESTATE OF JACKSON MUIGA KAMAU - DECEASED

JEMIMA WANGUI MUIGA.....PETITIONER

AND

ALEX KAMANGU MUIGA.....OBJECTOR

JUDGMENT

The deceased, Jackson Muiga Kamangu died on 17th December 1994, and was survived by the following -

- (1) *Jemimah Wangui Muiga (widow)***
- (2) *Anne Wanjiru (daughter married)***
- (3) *Alex Kamangu Muiga (son)***
- (4) *Agnes Wangui (daughter married)***
- (5) *Alice Wamuyu Muiga (daughter)***
- (6) *Abigael Wangari Muiga (daughter)***

The widow took out and was issued with a Grant of Letters of Administration on 7th May 1996. Mr. Alex Kamangu Muiga objected to the Grant made to the widow, and his application dated 22nd July 1996 was allowed, and the Grant issued on 7th May 1996 was revoked and annulled by orders of court made on 5th November 1996, and both the widow, Jemimah Wangui Muiga and Alex Kamangu Muiga (*a son to the deceased*) were appointed Administratrix and Administrator of the deceased's estate. A Grant of Letters Administration Intestate was accordingly issued on the same day, 5th November 1996.

An appeal against the decision revoking and annulling the original Grant to the widow was lodged, but it did not proceed beyond the Notice of Appeal dated 6th November 1996. There was no further movement on the file until the 10th December 1997, about a year later when the court ordered the dispute on succession be referred to arbitration before the District Officer, Bahati Division.

The arbitration was conducted under the auspices of the Bahati Land Disputes Tribunal, under the Chairmanship of one Amos Ngata - who was not himself the District Officer although the Report was forwarded under the hand of J. I. Gichigi, the District Officer by his letter dated 13th October 1998 filed in court on 20th November 1999.

The Report was objected to through an application brought by way of a Notice of Motion dated 31st May 1999. The objection was allowed through a consent order made on 17th October 2000, and arbitration award was set aside on the ground that the court orders required the arbitration to be solely conducted by the District Officer and not a panel of elders.

Due to both absence of the Objector for a period of 2 years from Nakuru, and withdrawal of counsel for the Objector and coming onto the record by another firm of Advocates, no further orders were made until 1st November 2007 when parties were ordered to file further affidavits on their preferred mode of distribution of the deceased's estate within twenty-one (21) days. This did not happen largely because no application for confirmation of the Grant was made until one dated 11th May 2008 was filed on 15th July 2008.

Together with the application for Confirmation of Grant, the Applicant (*Petitioner*), filed an Affidavit in Support of the Summons for Confirmation of the Grant, and in paragraph 7 thereof, set out her proposed mode of distribution of the estate.

To that Application and Affidavit in Support thereof, the Objector filed on 4th September 2008, an Affidavit in Protest sworn on 26th August 2008, proposing in paragraph 15 thereof, a mode of distribution. The Objector had another affidavit sworn and filed on 30th June 2010 proposing in paragraph 4 thereof a mode of distribution of the deceased's estate, very similar to mode proposed in paragraph 15 of the Affidavit in Protest.

In his Further Affidavit sworn on 3rd September 2010, and filed on 7th September 2010, the Petitioner in paragraph 3 thereof accepted the Objector's mode of distribution in these terms -

"3. That in answer to paragraph 4 of the Replying Affidavit, I wish to State that the proposed distribution is okay except that Plot No. 889 should go to Agnes Wambui and not the Objector while (not which) Plot No. 172 Maundu ni Meri Rumuruti should go to the Objector."

The Petitioner, in reply to paragraphs 5, 7, 8 & 9 of the Objectors Replying Affidavit also stated that the motor cycle KQQ 592, was in order when the Objector took possession of it, and that tractor X-GK 184 was equally in good order, when the objector took it and was worth on the lower side Kshs 530,000/=, and that the objector took 7 cows, 3 calves, and 17 sheep all valued at Shs 204,000/= and that the pension for TSC was Shs 319,703/= and not Shs 600,000/=.

In paragraph 8 of the Further Affidavit, the Petitioner expressed ignorance of the existence of any monies with Nakuru Teachers Co-operative Credit Society Limited, and neither is she aware of the existence of shares with Barclays Bank of Kenya Limited, and that the Objector should shade evidence on them.

It is unclear whether these claims and counter-claims have any veracity in them, except to say that there has been no response by the Objector to the Petitioner's Further Affidavit, and in the absence thereof, I take it that the averments of the Petitioner in relation to the motor cycle and the tractor are correct.

I have considered these affidavits on the proposed mode of distribution. The relevant provision for the distribution of an estate is Sections 35, 40 & 42 of the Law of Succession Act (*Cap. 160, Laws of Kenya*).

Section 35(1) of the Act grants to the surviving spouse, ***(a) the personal and household effects of the deceased absolutely;*** and ***(b) a life interest in the whole residue of the net intestate*** which determines in the event of re-marriage by the widow to any person. Section 35(2) donates to the surviving spouse the power of appointment of all or any part of the capital of the net intestate estate by way of gift taking effect immediate effect among the surviving child or children

Section 40(1) provides for situations where the intestate has married more than once under any system of law which permits polygamy, his personal and household effects and the residue of the net intestate estate shall in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children. Thereafter, the distribution of the personal and household effects and the residue of the net intestate estate within each house.

Section 42(b) provides that where property has been appointed or awarded to any child or grandchild under the provisions of Section 26 or Section 35 of the Act, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child grandchild or house.

In this case, the Petitioner is the surviving spouse of the intestate. Her house comprises of herself as the widow, and her daughters, Anne Wanjiru, Agnes Wambui, Alice Wamuyu Muiga and Abigael Wangari Muiga.

The Objector on the other hand is the only one in his mother's house.

Under Section 35 of the Act, the widow is entitled to the personal and household effects of the deceased absolutely; and a life interest in the whole residue of the net intestate. So whatever household and personal effects the intestate had, belong and pass to the surviving spouse, that is to say, the Petitioner. Being the widow she is also entitled to any pension which may accrued to the deceased upon his death. She would also be entitled to the net intestate, that is to say, the free property of the deceased after taking into account such costs as funeral expenses, debts and liabilities, expenses of obtaining probate or (*as in this case*) letters of administration, debts and other liabilities. There is no estate duty payable in Kenya yet.

The net intestate comprises -

- (a) *Plots Nos. 880, 889, 890, 892 all within Nyandarua Progressive Agencies;*
- (b) *Plot No. 172 (Maunda in Meri) Rumuruti*
- (c) *Nakuru Teachers Housing Co-operative Society Plot No. 0093*
- (d) *Terminal Benefits with Teachers Service Commission Shs. 319,703.60 held by the Public Trustee*
- (e) *Motor cycle KQQ 592*
- (f) *Tractor Ex. GK 184, 2 Disks and Trailer*
- (g) *7 cows, 3 calves and 17 sheep*
- (h) *Share Number 1913 with Nakuru Teachers Co-operative Savings and Credit Society Ltd*
- (i) *Unspecified shares with Barclays Bank of Kenya Ltd, and Kenya Commercial Bank Ltd*

Taking into account the above provisions of the Law of Succession Act, SS 35 and 42(b), the intestate shall be distributed as follows -

To: Jemima Wangui Muiga

- (i) *Plot No. 892 Nyandarua Progressive Agencies,*
- (ii) *Plot No. 0093 Nakuru Teachers Housing Co-operative Society,*

- (iii) *Share Number 1913 with Nakuru Teachers Co-operative Savings and Credit Society Ltd,*
- (iv) *Terminal Benefits with Teachers Service Commission - Shs. 319,703.60 held by the Public Trustee*
- (v) *Shares (88) with K.C.C. Ltd. Supplier No. 04698*
- (vi) *Shares with Barclays Bank of Kenya Ltd*
- (vii) *Shares with Kenya Commercial Bank Ltd*
- (viii) *3 cows and 3 goats.*

2. To Alex Kamangu Muiga

- (i) *Plot No. 880 Nyandarua Progressive Agencies,*
- (ii) *Plot No. 172 (Maundu ni Meri) Rumuruti,*
- (iii) *XGK - 182 Tractor with 2 disks and trailer, valued at Shs 530,000/=*
- (iv) *2 cows and 3 goats.*

3. To Alice Wamuyu Muiga

- (i) *Plot No. 890 Nyandarua Progressive Agencies.*

4. To Agnes Wambui

- (i) *Plot No. 889 - Nyandarua Progressive Agencies*

Although the Petitioner denies existence of any shares in either Barclays Bank of Kenya Ltd and Kenya Commercial Bank Ltd, I have included their distribution to enable the Petitioner seek better particulars with the said Banks, and have any such share credited to her, rather than risk further litigation in an old matter. The starting points would be Accounts No. 404/232 Nakuru West Branch and Barclays Bank Kenya Ltd shares of Kshs 10-675 A/C No. 027314, and Kenya Commercial Bank Ltd A/c No. 100336586 or their successor accounts.

If any further assets are discovered parties will be at liberty to have the Certificate of Confirmation rectified.

The respective beneficiaries shall bear the respective costs for the transfer of said properties to each one of them. Save therefore as aforesaid there shall be orders as aforesaid.

Dated, signed and delivered in Nakuru this 11th day of March 2011

M. J. ANYARA EMUKULE
JUDGE