



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA

AT KITALE.

SUCCESSION CASE NO. 2 OF 2003.

C.F.C.C.....APPLICANT.

AND

W.K.C.....DECEASED.

JUDGMENT.

1. **C.F.C.C.** (herein after referred to as the petitioner) who is also the widow of the late **W.K.C.** (deceased), petitioned for letters of administration over the deceased estate. It is indicated in the affidavit in support of the petition for letters of administration that the deceased died on 27th September, 2002 and he was survived by the following;

- (i) C.F.C.C. – Widow.**
- (ii) R.T.C. - son.**
- (iii) L.C. - daughter.**
- (iv) O.K.C. - son.**

2. The letters of administration intestate was issued to the petitioner on 12th June, 2003. On 23rd February, 2004, the petitioner applied for confirmation of the grant. It would appear a certificate of confirmation of the grant was issued on 29th January, 2004, and it was pursuant to a consent signed by all the beneficiaries of the deceased who are stated in the affidavit in support of the grant. According to the confirmed grant, the petitioner was to be registered to hold the deceased's estate in trust for herself and the children of the deceased.

3. On 27th May, 2009, L.K.C.(herein afterreferred to as the applicant)filed a summons under sections 45, 47, 71 and 76 of the Law of Succession Act as well as under Rules 44 and 73 of the P & A rules. The applicant sought for orders that the petitioner do provide an account of the rental proceeds from the deceased's estate. The applicant sought for restraining orders against the petitioner from interfering with plot No. 7/6 LR. No. 455/6 Nakuru Town. She also sought for an order that the trust be revoked and the estate of the deceased be distributed to the beneficiaries.

4. The record indicates that this matter came up for hearing on several occasions and the court directed that the petitioner should distribute the estate to the beneficiaries. It turned out that the petitioner and the applicant did not agree on the mode of distribution. The applicant filed a proposed mode of distribution in which she has proposed that the deceased's estate be distributed according to the provisions of sections 41

of the Law of Succession Act that provides that the residue of the net estate of a deceased person who is survived by a spouse and children be distributed according to the number of children and the surviving spouse be considered as a unit.

5. On the part of the petitioner she filed her preferred mode of distribution where a substantial number of assets is to be transferred to other parties described as purchasers. The petitioner contends that when she filed the petition for letters of administration, she discovered some assets were left out from the schedule of distribution and also the deceased person had sold several parcels of land before his death. The petitioner argued that there are other parties that she is supporting who used to be provided for by the deceased. Moreover the petitioner being the widow of the deceased acquired an interest in the net assets and her share cannot be equated with that of the applicant who is a child borne out of the wedlock.

6. Going by the record both parties have agreed on the list of assets belonging to the estate of the deceased estate which are available for distribution as follows:-

- (1) Kitale Municipality Bloc 19/Bidii/71..... 4.7 acres.
- (2) Kitale Municipality Bloc 19/Bidii/49..... 4.1 acres.
- (3) Kitale Municipality Bloc 19/Bidii/124..... 70.3 acres.
- (4) Kitale Municipality Bloc 19/Bidii/125..... 2 acres.
- (5) Kitale Municipality Bloc 19/Bidii/126..... 1 acres.
- (6) Kitale Municipality Bloc 19/Bidii/127..... 1 acres.
- (7) Kitale Municipality Bloc 19/Bidii/128..... 3 acres.
- (8) Kitale Municipality Bloc 19/Bidii/129..... 8 acres.
- (9) Kitale Municipality Bloc 19/Bidii/119..... 1 acres.
- (10) Kitale Municipality Bloc 19/Bidii/146.....13.6 acres.
- (11) Kitale Municipality Bloc 19/Bidii/122..... 17.1 acres.
- (12) Nakuru Block 7/6 Dawsonville 10 acres.
- (13) Shares in Solai/Ndunguri Block 926.5 acres.

(14) Moto vehicle Registration No. KAK 036S.

(15) Ford Tractor Registration No. KLX 201.

(16) Peugeot Pick-up KSD 175.

(17) 17590 Shares in Kenya Commercial Bank.

(18) 700 shares in National Bank of Kenya.

(19) 1155 shares in Standard Chartered Bank.

(20) 1920 shares in Barclays Bank.

7. The issue for determination in this judgment is principally how the deceased's estate should be distributed among the beneficiaries. Both counsel for the petitioner and the applicant were also in agreement that the mode of distribution of the deceased estate is the only outstanding issue. The petitioner contests that there were purchasers who bought the properties from the deceased but the deceased had not transferred the titles by the time he passed away. This aspect is opposed by the applicant as a mere afterthought designed to deny her of her rightful share of the deceased's estate. On the part of the petitioner, she did not attach any documents such as sale agreements to show that the deceased had entered into so many agreements with so many purchasers for sale of his land before he passed away. Moreover, when the petitioner petitioned for the letters of administration, she did not indicate that the deceased had any liabilities.

8. I find the issue of liabilities i.e. the proposed sale of deceased assets to third parties has just been disclosed in the petitioner's affidavit sworn on 9th March, 2010 in response to this application. The petitioner has also introduced another angle that the properties belonging to the deceased were jointly acquired. The petitioner claims that she contributed to the acquisition of the deceased property thus she should be given one half share then the rest can be distributed to the children. This issue has been raised late in these proceedings perhaps because the applicant challenged the petitioner to account for the income accruing from the estate and also to distribute the estate. The law of succession has not made a provision for a widow to get one half shares, first and the balance to be divided among the beneficiaries. This aspect is important but for now it should be addressed by the Law Reform Commission

9. Under the provisions of Cap 160, the petitioner being the widow of the deceased has priority to be issued with the letters of administration as provided for under section 66 of the Law of Succession which provides:-

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference:-

(a) Surviving spouse or spouses, with or without association of other beneficiaries;”

10. On distribution of the net residue of the estate, the petitioner is the only surviving spouse of the deceased and it is common ground the deceased was survived by 3 children. The applicant was a child of a previous marriage and it would appear (although it is not clear from the pleadings) that **R.T.** and **O.K.** are children of the deceased with the applicant. Under the provisions of section 35, the petitioner being the only surviving spouse is entitled to personal and household effects of the deceased absolutely. The petitioner is also entitled to a life interest in the whole residue of the net intestate estate.

11. In this case, the applicant has applied for the distribution of her share, thus according to the provisions of section 40 of the Act, the applicant can be said to be a child of another house. According to the Act, the property of the deceased should be distributed according to the number of children, adding the petitioner as an additional unit to the number of children. In this case, the petitioner should be awarded the motor vehicles which have been in her possession since the demise of the deceased. In my opinion, these motor vehicles are chattels that can very well pass for personal effects. Further considering the position of the petitioner as a widow, who was perhaps dependent on the deceased and considering her age, it will be in the interest of justice to allocate to her shares from the Nairobi Stock for her own use.

12. The balance of the assets of the deceased's estate should be shared equally among the three beneficiaries with the petitioner as an additional unit. The petitioner is hereby ordered to distribute the deceased's estate among herself, R.T.C., L.C. and O.K.C. equally. That estate comprises of the following list of assets that was agreed upon.

- (1) Kitale Municipality Bloc 19/Bidii/71..... 4.7 acres.

- (2) Kitale Municipality Bloc 19/Bidii/49..... 4.1 acres.

- (3) Kitale Municipality Bloc 19/Bidii/124..... 70.3 acres.

- (4) Kitale Municipality Bloc 19/Bidii/125..... 2 acres.

- (5) Kitale Municipality Bloc 19/Bidii/126..... 1 acres.

- (6) Kitale Municipality Bloc 19/Bidii/127..... 1 acres.

- (7) Kitale Municipality Bloc 19/Bidii/128..... 3 acres.

- (8) Kitale Municipality Bloc 19/Bidii/129..... 8 acres.

- (9) Kitale Municipality Bloc 19/Bidii/119..... 1 acres.

- (10) Kitale Municipality Bloc 19/Bidii/146.....13.6 acres.

- (11) Kitale Municipality Bloc 19/Bidii/122..... 17.1 acres.

(12) Nakuru Block 7/6 Dawsonville 10 acres.

(13) Shares in Solai/Ndunguri Block 926.5 acres.

13. The following motor vehicles; KAK 036S, KLX 201 and KSD 175 shall be distributed to the petitioner. The following shares shall also be distributed to the petitioner; 17590 shares in Kenya Commercial Bank, 700 shares in National Bank of Kenya, 1155 shares in Standard Chattered Bank and 1920 shares in Barclays Bank.

This being a family matter each party shall bear their own costs of litigation.

Ruling read and signed this 24th day of June, 2011.

MARTHA KOOME.

JUDGE.