



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 599 OF 2009

IN THE MATTER OF THE ESTATE OF SUSAN NYAMBURA KAMAU – DECEASED

JOHNSON KAMAU GACHOKA.....PETITIONER

VERSUS

PETER KAMAU GITURO.....OBJECTOR

RULING

On 25th November 2010, this Court declined to confirm the grant issued jointly to John Kamau Gachoka (Applicant) and Peter Gituro Kamau alias Kamau Peter Gituro (Protector) until the duo filed further affidavits with a schedule of distribution that conforms with the provision of *Section 35* of the Law of Succession Act. I have read the further affidavits filed by each of them. On his part, John Kamau Gachoka, the Petitioner herein, has proposed for the Estate to be shared as follows:

- (a) All the personal and household effects be given to the Petitioner.
- (b) The Petitioner also have Life interest of the residue of the net intestate of the Estate.
- (c) The 7 undivided share in L.R. NO. GITHI/KIREREMA/142 to be equally shared between the beneficiaries.
- (d) All the cash and stocks be given to the Petitioner.

Peter Gituro Kamau alias Kamau Peter Gituro, on his part filed a further affidavit in which he proposed the Estate to be shared as follows:

- (1) ***All monies held in A/C 114173977, K.C.B. Mukurweini, branch to be shared equally by the following:***
 - (a) ***David Mwangi Kamau.***
 - (b) ***Rose Wambere Kamau.***
 - (c) ***Stephen Njeru Kamau.***
 - (d) ***Eddah Nyaguthi Kamau.***
 - (e) ***Peter Gituro Kamau***
- (2) ***C.D.S.C. A/c No. 0000001541994/11-10 be shared equally between:***
 - (a) ***David Mwangi Kamau.***
 - (b) ***Rose Wambere Kamau.***
 - (c) ***Stephen Njeru Kamau.***
 - (d) ***Eddah Nyaguthi Kamau.***
 - (e) ***Peter Gituro Kamau.***
 - (f) ***John Kamau Gachoka (life interest)***
- (3) ***GEMA Holdings shares (2 acres) to be shared equally by:***
 - (a) ***David Mwangi Kamau.***

- (b) **Rose Wambere Kamau.**
- (c) **Stephen Njeru Kamau.**
- (d) **Eddah Nyaguthi Kamau.**
- (e) **Peter Gituro Kamau.**

A careful perusal of the above proposals will show that they do not agree in certain aspects. However it is the role of this Court to look at the schedule of distribution which conforms with the provisions of *Section 35* of the Law of Succession Act. This cause relates to the Estate of Susan Nyambura Kamau, deceased. The deceased was survived by the following: Johnson Kamau Gachoka (widower).

- (a) David M. Kamau - son.
- (b) Rose W. Kamau - daughter.
- (c) Stephen N. Kamau - son.
- (d) Eddah N. Kamau - daughter.
- (e) Peter G. Kamau - Kamau.

Under *Section 35* of the Law of Succession Act, such an Estate should be distributed as follows:

- (a) All personal and household effects of the deceased to go to the surviving spouse.
- (b) The surviving spouse too, is entitled to a life interest in the whole residue of the net intestate Estate.

The surviving spouse is entitled during the continuance of the life interest, have the power of appointment of all or any part of the capital of the net intestate Estate by way of gift taking immediate effect among the surviving child or children. The law is very clear under *Section 35 (5)* that subject to any appointment or award under this Section, the whole residue of the net-intestate Estate shall on the death of the surviving spouse, devolve upon the surviving child and thereafter to be equally divided among the surviving children. Perhaps it is necessary at this juncture to know the meaning of “life interest” so that one can appreciate its application in these proceedings. In Black’s Law Dictionary 8th Edition, ‘Life interest’ is stated to be an interest in real or personal property measured by the duration of the holder’s or another named person’s life. The law is quite explicit that the surviving spouse takes immediate possession of the personal and household effects of the deceased. He or she will have a life interest over the net-intestate Estate. I think the two further affidavits do not meet the threshold set by the law. Having failed to provide that information as directed, this Court now steps in by exercising its inherent power under *Section 47* of the Law of Succession Act and makes the following orders:

The grant be confirmed on the basis of the following mode of distribution:

- (a) All personal and household effects of the deceased to be given to the widower (Petitioner)
- (b) Cash held in A/C No. 114173977, K.C.B, Mukurweini Branch be shared as follows:
 - (i) Half of it to go to the widower (Petitioner)
 - (ii) The remainder to be shared equally between the children of the deceased.
- (c) C.D.S.C. A/C No. 0000001541994/11-10.
- (d) Shares with Gema Holdings (2 acres of land) the widower (Petitioner) to have life interest and thereafter to be shared equally between the deceased’s children namely:
 - David Mwangi Kamau
 - Rose Wambere Kamau
 - Stephen Njeru Kamau
 - Eddah Nyaguthi Kamau
 - Peter Gituro Kamau

Since the dispute involves members of the same family, I direct that each of them meets his or her own costs.

Dated and delivered at Nyeri this 18th day of November 2011

J. K. SERGON
JUDGE

In open court in the presence of Maatwa holding brief A. Kariuki for Protestor and Kahiga holding brief Muthigani for Petitioner.