



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO 611 OF 1995

IN THE MATTER OF THE ESTATE OF KIBUE KANGARI (DECEASED)

RULING

The feuding parties in this matter, Chris Ruringe Kibue, Veronicah Njeri Kibue and Alice Nyakarura Kibue are siblings – a brother and his two sisters. The brother, Christopher Ruringe Kibue, is the Administrator of the estate of their deceased father and the first applicant herein. Veronicah Njeri Kibue is the co-applicant and she is married. The two applicants have come to court to seek an order for Veronicah's name to be included in the list of beneficiaries of the estate of their late father.

The 1st applicant told the court that the law provides for all offspring to inherit their father's property if he dies intestate. He urged the court to review the earlier order made in this matter so that the 2nd applicant can inherit part of her father's estate. In support of her brother's statement, the second applicant herself told the court that she only needed a place where she could cultivate to get food for feeding her children like the other beneficiaries.

Opposing the application, the respondent, Alice Nyakarura Kibue, requested court to do away with this application because the 2nd applicant was married. She argued that her sister Veronicah had applied for sub-division on account of being a beneficiary, yet she had sat on her rights for all those years while she was alive to what was going on. In a short reply, the 1st applicant argued that Alice had not put up a substantive ground for disinheriting her own sister. She also had been married at one time.

I agree with the 1st Applicant's sentiments. The Respondent's ground for disinheriting her sister is that the latter is married. However, the relevant part of **Section 29(a)** of the **Law of Succession Act** comes to the 2nd Applicant's aid. It states that-

“For the purposes of this Part, “dependant” means –

(a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;“

It is noteworthy that this section does not discriminate between male and female children, or married and unmarried daughters. All are equal before the eyes of the Law of Succession, and if Parliament had a different intention, it would have said so. It is therefore immaterial that the second applicant is married. Secondly, in the circumstances of this case, since the estate of the deceased has not yet been distributed, I find that it is not too late to accommodate the 2nd Applicant to claim her rightful dues. It is

her birthright to inherit her share of her father's estate. The law grants it, and the court should award it.

For the above reasons, I accordingly allow the application and order that Ms. Veronicah Njeri Kabue's name be included on the list of beneficiaries of the estate of her late father, Joseph Kibue Kangari.

Orders accordingly.

Costs in the cause.

DATED and DELIVERED at Nairobi this 8th day of December, 2011

L. NJAGI

JUDGE