



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Succession Cause 245 of 2008
IN THE MATTER OF THE ESTATE M U (DECEASED)

RULING

P N M and P K U being the 2nd widow and brother of the deceased, M U, respectively jointly petitioned for a grant of representation for the estate of the deceased. That petition excluded the 1st widow and her house. The 1st widow, M N M did object and the court upon cancellation of the grant issued to the 2nd widow and P K U ordered that a fresh grant be issued jointly to the two widows.

The widows have, however, failed to agree on the mode of distribution hence this ruling to resolve that stalemate.

The 1st widow's house has two surviving children out of five. Three of the children in this house are deceased but two are survived by widows and children. The 2nd widow has six children, only two being biological children of the deceased. There is however no evidence that the rest were not cared for by the deceased during his lifetime. In the absence of the contrary evidence, I conclude that all the six children were dependants of the deceased.

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The estate of the deceased comprised the following real properties:

1. Miti Mingi Mbaruk Block 6/76
2. Miti Mingi Mbaruk Block 6/33
3. Miti Mingi Mbaruk Block 6/75
4. Miti Mingi Mbaruk Block 6/13
5. Nakuru Municipality Block 26/31
6. Kericho Kipchimchim 1737
7. Miti Mingi Mbaruk Blk 6/300
8. Miti Mingi Mbaruk Block 6/94
9. Miti Mingi Barut Block 6/211
10. Miti Mingi Baruk Block 6/212
11. Nakuru Municipality Block 29/47 (Ronda)
12. Fort Hall No.29 and shares in:
 - i) Barclays Bank,
 - ii) National Bank,
 - iii) Kenya Commercial
 - iv) Standard Chartered Bank
 - v) ICDC Investments Company as well as bank accounts in
 - (a) Kenya Commercial Bank, Nakuru Branch
 - (b) Barclays Bank Nakuru, East Branch.

The deceased also had a tractor registration No.KUN 093 John Dear.

In the revoked grant the estate was distributed between the 2nd widow P N M and the 1st widow's daughter A M M either absolutely or to hold in trust for her children in the case of P or for her siblings in respect of A. The tractor and Fort Hall No.29 was to be held in trust for the two houses of the deceased.

Evidence adduced by the 1st widow was that there are two properties which have rental houses, namely Nakuru Municipality Block 29/47 Ronda which she alleged has 99 commercial and residential houses. That this property is occupied and under the control of the 2nd widow, who collects monthly rents amounting to over Kshs.100,000/=. The other property occupied and under the control of the 1st widow's son, I is Nakuru Municipality Block 26/31 comprising 33 rental houses.

There is also evidence that the 1st widow's daughter, A M M was given the property in Kericho during the life of the deceased. That property can only be Kericho Kipchimchim 1737. It was the 2nd widow's case that Nakuru Municipality Block 29/47 Ronda has only 56 houses and not 99 as alleged by her co-widow. She also confirmed that of her six children, two are still in school – T W who is under 18 years and D M who is pursuing a university degree. It was her testimony and that of her witness, P K, the deceased person's brother, that the

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deceased had before his death declared that the 1st widow should not inherit any property from him or set foot on any of his properties. In compliance with this wish, the 2nd widow in the revoked grant made provision for the 1st widow's two children but not the 1st widow. The 2nd widow conceded that the property under the control of I has 33 mud houses.

While the 1st widow insists that the entire estate be distributed equally between her house and that of the 2nd widow, the latter maintains that distribution as proposed in the revoked granted be maintained, where she retains Nakuru Municipality Block 29/47 Ronda, I, Nakuru - Municipality Block 26/31 Mwariki and A M, Kericho Kipchimchim 1737, and the rest of the properties be held in trust for respective houses. There is no doubt that the deceased distributed part of his estate *inter vivos*. For instance Kericho Kipchimchim 1737 was gifted to A M by the deceased for her kindness towards him. That property is not available for distribution.

The 1st widow's son, I occupies part of Nakuru Municipality block 26/31/M while the 2nd widow also occupies part of Nakuru Municipality Block 29/47 Ronda. The portion in physical occupation by either I or the 2nd widow must equally be taken into account.

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On closer analysis of the evidence, it is apparent that the contention is mainly on the Nakuru Municipality Block 29/47 Ronda probably due to its commercial value. Although it was alleged that rent in the sum of Kshs.100,000/= per month is realized from it, no evidence was produced by either side on the actual rent on this property.

In terms of **section 40** of the **Law of Succession Act**, and bearing in mind that the 2nd widow has school/university going children, it is ordered that the estate shall be distributed as hereunder:

1. Kericho Kipchimchim 1737 – A M M.
2. - Miti Mingi Mbaruk Block 6/76 Mwariki–M N
M's house.
- Miti Mingi Mbaruk Block 6/133 Mwariki – M N
M's house
- Miti Mingi Mbaruk Block 6/75 Mwariki – M N
M's house.
- Miti Mingi Mbaruk Block 6/13 Mwariki – M N
M's house.
- 23 houses from Nakuru Municipality Block 26/31 – M
N M's house.
- 10 houses from Nakuru Municipality Block 29/47 Ronda –
M N. M's house.

3. - Miti Mingi Mbaruk Block 6/300 – P N’s house.

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- Miti Mingi Mbaruk Block 6/94 – P N’s house.

- Miti Mingi Mbaruk Block 6/211 – P N’s house.

- Miti Mingi Mbaruk Block 6/212 – P N’s house.

- 46 Houses from Nakuru Municipality Block No.29/47 Ronda

- P N’s house.

- 10 houses from Nakuru Municipality Block 26/31 Mwariki –

P N’s house.

4. Fort Hall No.29 – Equal shares.

5. Shares in Barclays Bank, National Bank, Kenya Commercial Bank, I.C.D.C. Investments Company Limited and Standard Chartered Bank – In Equal shares.

6. Bank Accounts – Kenya Commercial Bank Account No.198000196 Nakuru and Barclays Bank Account No.6218239 – In equal shares.

7. Proceeds of Tractor KUN 093 – to be shared equally – Kshs.150,000/= to be paid to the 1st house by the 2nd house and P K U.

In making the above orders, I have taken into consideration what the deceased distributed in his lifetime, the school (university) going children and the fact that the 2nd widow has been receiving rent from the 56 houses in the Ronda property while I has also been in receipt of rent from the 33 houses in Mwariki which are merely mud houses.

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Being a family matter, I make no order as to costs.

Dated, Signed and Delivered at Nakuru this 5th day of February, 2010.

W. OUKO

JUDGE