



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**Succession Cause 126 of 1993**

**IN THE MATTER OF THE ESTATE OF PETER KIGONDU WANGI (DECEASED)**

**RULING**

The applicant has moved the court under **section 35(2)** of the **Succession Act** praying that his mother, the sole surviving spouse of the intestate herein be ordered to exercise her power of appointment under the said section of the Act.

The applicant prays that, upon the exercise of the power of appointment he be given the following properties:

- (a) 1.2 acres out of land parcel No. Nyandarua/Kipipiri/81 measuring 7.7 acres or thereabouts.
- (b) 1 shop and 1 rear room in Nyandarua/Miharati T.15 with 7 developed shops.

The above two assets are held by the respondent who holds a life interest therein pursuant to a grant issued by the court on 16<sup>th</sup> June 1993. The applicant believes that there is need for the respondent to exercise the statutory power of appointment under **section 35(2)** and that her failure to do so is improper and unreasonable. The applicant contends that the respondent has discriminated against him when sharing the rental income she derives from the above properties with others and that she and other beneficiaries have been benefiting from the estate to his exclusion and detriment. He even compares his monthly income with that of the respondent whom she says earns about Shs 12,000/= against his Shs 10,000/=.

In her replying affidavit, sworn on 6<sup>th</sup> May 2006, the respondent depones that she has distributed the estate to all her children, including the applicant, equally and that she is dependent on the two properties claimed herein for her subsistence and livelihood, more so, the purchase of medication for diabetes. She depones further that the applicant does not assist her in any way and should await her demise, when her life interest will expire in any event and the two properties shared out among her surviving beneficiaries.

The applicant has not substantiated his claim that he has been sidelined and/or discriminated against in the enjoyment of the two parcels against which he lays a claim. The basis of his claim is also not demonstrated. I do not consider that the respondent can be restrained in the manner in which she uses or enjoys her life interest. That she is dependent on the income generated by the said properties for her general upkeep and welfare, is, in my considered view, a good enough reason not to exercise the power of appointment.

I see no merits in this application and hereby dismiss the same with no order as to costs.

**Dated, signed and delivered at Nakuru this 5<sup>th</sup> day of August 2009**

**M. G. MUGO**

**JUDGE**