



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT EMBU

Succession Case 544 of 2002

IN THE MATTER OF THE ESTATE OF MUMBURA MACHARIA (DSD)

AND

ELODIAN WANJUKI MUMBURA.....APPLICANT

VERSUS

ANN WANJIRA MUMBURA.....RESPONDENT

RULING

Application dated 23/11/06 and 10/11/2006 were argued together. Application dated 10/11/2006 is for confirmation of grant made by Elodian Wanjuki Mumbura. Application dated 23/11/2006 is made by Ann Wanjira second administrator "that the grant of letters of administration granted be rectified and be confirmed. It is clear then the two administrators do not agree as to how the estate should be distributed. We have to look at the provisions of the Succession Act Cap 160. The deceased was a polygamous man and he left 2 widows Ann Wanjira Mumbura and Elodina Wanjuki Mumbura. The relevant provision is Section 40 of the Act. The personal and household effects and the residue of the net intestate estate shall be divided among the houses according to the number of children in each house adding the wife as an additional unit. The distribution of the personal and household effects and the residual of net intestate within each house shall be in accordance with the rules set out in Section 35 of the Act.

It is to be noticed that there are no suits in court where any claims are made to the assets of this estate. The assets are listed as:-

- Plot No. Ngandori/Ngovio/719
- Plot No. Ngandori/Ngovio/1605
- Embu/Municipality/935
- Pick-up KPL 836
- Canter KZK 494
- Canter KBO 802
- Bank A/C with Co-operative- Bank No. 1026-02-022

- Barclays Bank A/C 041112417.

This matter has been dealt with by this court (Hon. I. Lenaola) when a ruling was made on 3rd February, 2005 and thereafter Certificate of confirmation was issued on 12/5/2005. Then an amended Summons for Confirmation was filed on 13/11/2006 was filed by an Administrator Elodiana Wanjuki Mumbura through her advocate Joe Kathungu. The amendment was to Summons dated 14/2/2005. This is the application which was filed on 21/2/2005 by Elodian Wanjuki Mumbura. In his ruling dated 3/2/2005 the court under paragraph 5 stated "I shall overrule the protest (of Anna Wanjiku) and order that the grant herein be listed for confirmation in terms of the proposal by Elodian Mumbura save that the motor vehicles belonging to the deceased and his bank accounts be added to the schedule of distribution."

Thereafter grant was confirmed according to the court orders and in terms of Application filed by Elodian. It is to be noted that she did not include the vehicles and bank accounts as ordered by the court. The amended summons for confirmation is accompanied by an affidavit with a schedule showing distribution dated 10/11/2006 and an affidavit sworn on 24/8/2005 explaining why the vehicles were not included. She does not mention Bank account. Therefore the distribution she proposes is not in accordance with court order. Elodian has also filed a further affidavit shown on 20/1/2007 in which she has explained that all the daughters of Ann Wanjira are all married while her daughters are not married and she had proposed the co-wife Anna to share her portion with her daughters. She also denied knowledge of any money of deceased in any account in any Bank. Regarding vehicle No KPL 836 she says it was sold by deceased in his lifetime but the name of deceased has never been removed from the register. The evidence now placed in court demands a review and rectification of the certificate of confirmation already issued on 12/5/2005. Elodian proposals do not include everybody and is not equal. She does not include 4 daughters namely:-

- Irene Kanyiva
- Faith Wambugi
- Annet Kaari
- Phillis Wanyaga

The applicant in the application dated 23/11/2006 Anna Wanjira Mumbura seeks rectification of the grant already issued. The application is supported by affidavit of applicant with exhibits. The existence of Barclays Bank Account is confirmed. Records from Kenya Revenue authority show ownership of vehicle KQD 802 and KPL 836 and property forming the estate of deceased including vehicles ; KPL 836, KZK 394, KQD 802.

Further Anna proposes that all children named as surviving the deceased be included in the inheritance and each widow and her sons and daughters take one piece of land each as set out in her affidavit with the Plot No. 935 with the equipment therein be taken by the two widows equally. The motor vehicles to be shared by the two widows together with the Bank Accounts. The land forming part of the estate is registered land and therefore it is included in the agricultural land within the definition contained in Section 2 of the Succession Act. The other issue to be pointed out is that the law of succession does not distinguish between male and female children or married girls. It would be against modern jurisprudence to disinherit a female child because she is married. This court therefore finds it necessary to rectify the certificate of distribution already issued and to order the distribution be in accordance with the proposals made by Ann Wanjira Mumbura. The reason is that the issued certificate is not in conformity of court orders issued on 3/2/2005 and the explanation given by the other Administrator (Elodian) is not satisfactory. The proper and lawful distribution is as provided under section 40 of the Succession Act.

Orders are made accordingly.

Dated this 1st February, 2008.

J. N. KHAMINWA

JUDGE

1/2/2008

Khamnwa – Judge

Njue – Clerk

Mr. Nganga HB for Kathungu

Read in open court.

J. N. KHAMINWA

JUDGE