



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KITALE

Succession Cause 148 of 2005

IN THE MATTER OF THE ESTATE OF MUSA KANDA KIPTUM (DECEASED)

AND

SIMEON MURKOMEN KITUM)

SELINA CHESIR KIPTUM).....PETITIONER

VS

JANE KANDA LIMO.....OBJECTOR

R U L I N G.

This application was made pursuant to the provisions of sections 26 and 27 of the Law of Succession Act.

The applicant, **JANE KANDA LIMO**, is the widow to the late **MUSA KANDA KIPTUM**. At least that is what she perceives herself to be. I say so because the petitioners have taken the position that the applicant had never been the wife to the deceased.

It is the applicant's case that she and the deceased were blessed with two children, namely Caroline Chepchumba and Stephen Kanda Limo. It is also her case that during the lifetime of Musa Kanda Kiptum, he had provided shelter for the applicant and the two children. He is also said to have provided for the applicant and the children, from the rental collections, from the houses which the deceased had put up at Kitengela. Indeed, the applicant says that she and the two children used to reside in one of the houses which had been but up by the deceased.

However, after the demise of Musa Kanda Kiptum, the applicant and the children were forced out of the premises at Kitengela. The person who forced them out is said to be the 1st petitioner, Simeon Murkomen Kiptum, the father to the deceased.

The applicant also accuses the 1st petitioner of taking away all her belongings. As a result, the applicant was currently residing with her father at Kaisagat.

She says that she is unable to educate, cloth or feed the children. She is therefore compelled to rely on her father and her brothers for support.

In order to enable the applicant cater for expenses for herself and for the children, in terms of food, clothing, medication and the school fees for Caroline Chepchumba, the applicant has asked this court to order the petitioners to pay to her, Ksh. 15,000/= every month.

When the application was before the court on 20th March, 2007, the petitioners offered to pay to the applicant Ksh. 5,000/= every month, pending the hearing and determination of the objection proceedings herein.

That offer was rejected by the applicant, as she felt that she deserved a larger amount. When rejecting the offer, the applicant stated that the rental income from the housing units built by the deceased, was Ksh. 100,000/= every month.

As the figure cited was not contained in the applicant's affidavit, the court adjourned the application to 7th June, 2007, with a view to giving to both parties a similar opportunity to file affidavits which would help the court be better informed on the issue of the income being generated from the properties that were part of the estate of Musa Kanda Kiptum.

The applicant thereafter filed an affidavit in which she detailed the income generated from the 37 housing units at Kitengela, as well as from the butchery, posho mill and bar, all of which are situated in Kitengela.

In the face of that affidavit, the petitioners contended that the applicant did not really know what she was talking about, because in the words of the petitioners, the properties at Kitengela were no longer being rented out.

At that stage, the court once again adjourned, so as to allow the parties an opportunity of verifying the facts on the ground. In particular, the parties were asked to utilize the time to ascertain if the properties at Kitengela were still being rented out. On that occasion, the court drew the attention of the parties to the fact that whether or not the properties were generating rental income, the children would need to be provided for, even whilst the objection proceedings remained unresolved. The parties were therefore encouraged to explore the possibilities of either having the petitioners provide for the children out of the rent which they were collecting, or alternatively allowing the applicant to try and collect the rents directly, if the petitioners were unable to collect the rents.

On 21st June, 2007, when the application was next in court, the applicant had filed an affidavit stating that the rental income was about Ksh. 115,000/= every month. The applicant did annexe photographs and copies of some receipts, to support her case.

On the other hand, the petitioner merely indicated that the income was not as high as had been suggested by the applicant. They said that the total monthly income was Ksh. 33,500/=. Therefore, the petitioners offered a sum of Ksh. 7,500/= monthly, as the provision for the dependants.

Having given due consideration to the application before me, I remind myself that pursuant to the provisions of section 26 of the Law of Succession Act, this court is empowered to make such reasonable provision as it thinks fit for a dependant.

Pursuant to section 27 of the Act, the court is granted a complete discretion to order that a specific share of the estate be given to the dependant or to make such other provision for him by way of periodical payments or lump sum. The court is also authorized to impose such conditions as it thinks fit.

In this case, the applicant is an objector. The objection proceedings are yet to be determined. Accordingly, her substantive claim is still outstanding. That claim is founded upon the applicant's contention that she is the widow to Musa Kanda Kiptum.

That foundation has been challenged by the petitioners, who contend that the applicant was never the wife to their son, Musa Kanda Kiptum.

Whilst that issue remains unresolved, it is important that the two innocent children be provided for by the estate. To that end, I find and do hold that a reasonable monthly remittance for the two children should be Ksh. 10,000/= from now henceforth. The said sum shall be remitted by the petitioners, to the applicant on or before the 10th day in every month, until further orders.

It is also directed that the objection proceedings be set down for hearing on a priority basis.

Meanwhile, the costs of the application dated 13/11/2006 shall remain in the cause. The reason for so ordering is that I believe that the party who is ultimately successful in the substantive aspect of the case should also be awarded the costs of the application. It is only by so doing that I believe that justice will have been done.

It is so ordered.

Dated and Delivered at Kitale, this 20th day of September, 2007.

FRED A. OCHIENG.

JUDGE.