

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 500 of 1992

IN THE MATTER OF THE ESTATE OF STEPHEN NG'ANG'A GATHIRU
(DECEASED)

RULING

This Ruling is related to amended summons dated 29.05.02 which sought confirmation of grant of letters of administration issued to Hannah Wambui Ng'ang'a on 08.07.92. The grant is stated to have been amended on 25.09.96. The present Ruling is concerned with the question of what is reasonable dependency for objectors Moses Muiruri Ng'ang'a and his grandmother Ruth Nyakio Gathiru.

The matter came up for hearing before me on 26.06.07 whereat learned counsel Mr. N.K. Njau told the court he was appearing for the petitioner/applicant while learned counsel Mr G. Muhoro said he was appearing for the objector/respondent.

Mr Njau informed the court that originally there was a protest to confirmation of the grant but that it was resolved after Moses Muiruri Ng'ang'a was declared a dependant of the deceased alongside his grandmother, Ruth Nyakio Gathiru. Mr Njau added that on 16.10.06 counsel for the dependants was directed by Rawal, J to file an affidavit as to what is reasonable dependency for the two objectors, Moses Muiruri Ng'ang'a and Ruth Nyakio Gathiru; that subsequently their counsel filed an affidavit which he, Mr Njau found inadequate for the intended purpose and that he told the objector's counsel so in writing. To these submissions, Mr Muhoro responded that at the time of the deceased's death, Moses Muiruri Ng'ang'a was an infant and could not have been spending much from the deceased; that what Moses should get now should be guided by the proposals contained in the affidavit of Moses Muiruri Ng'ang'a's mother, Edith Wairimu Ng'ang'a sworn on 07.11.06. This affidavit is to the effect that Moses Muiruri Ng'ang'a was born in 1990 and was only 2 years old at the time of the deceased's death; that she, Edith has been taking care of Moses through her own resources without receiving anything from the deceased's estate; that Moses Muiruri Ng'ang'a was at secondary school in Form III in 2006 and that she, Edith was paying his school fees and paying for his upkeep at approximately Kshs.10,000/= per month. Edith Wairimu Ng'ang'a proceeded to ask for Kshs.1,680,000/= for all the past period during which she was taking care of Moses, adding that Moses is bright with good chances of making it to university for which she asked for a further Kshs.1 million. Edith Wairimu also proposed in her affidavit that Moses Muiruri Ng'ang'a inherits or be awarded the various landed assets, shares and liquid assets enumerated in paragraph 10 of her aforesaid affidavit. Edith Wairimu Ng'ang'a proposed that the petitioner, Hannah Wambui Ng'ang'a takes the rest of the deceased's fixed assets plus 20% of the liquid assets and that the deceased's mother, Ruth Nyakio Gathiru takes 18% of the deceased's liquid assets. Mr Njau's rejoinder to the above proposed mode of distribution of the deceased's estate was that Moses Muiruri Ng'ang'a is not a beneficiary but a dependant and cannot be ranked on *pari passu* basis with beneficiaries. It was Mr Njau's position, as I understood it, that the objectors, Moses Muiruri Ng'ang'a and Ruth Nyakio Gathiru must show the nature and extent of the dependency they used to get from the deceased and that the court can only give them what is proved to be the dependency, which in his view has not been done. He pointed out that the petitioner/applicant had proposed a mode of distribution which has not been agreed upon and that the court should decide whether what the petitioner/applicant has offered Moses Muiruri Ng'ang'a is reasonable or whether it is what Moses has asked which is reasonable. According to Mr Njau, the affidavit of Edith Wairimu Ng'ang'a sworn on 07.11.06 has no relevance as to what is reasonable dependency or as to what benefits Moses Muiruri Ng'ang'a used to get from the deceased. Mr Njau sought directions on the way forward in deciding what is reasonable dependency.

I have given due consideration to the rival positions taken by the parties.

Counsel for the petitioner who had applied for confirmation of the grant issued to Hannah Wambui Ng'ang'a informed this court that both Moses Muiruri Ng'ang'a and the deceased's mother, Ruth Nyakio Gathiru had previously been declared dependants of the deceased. This was not contradicted by objectors' counsel. The only issue pending determination by the court now is what a reasonable dependency for the two objectors should be. According to the affidavit of the deceased's mother Ruth Nyakio Gathiru sworn on 22.11.04, the only person who has been enjoying the deceased's estate since the deceased's death is the petitioner/applicant, Hannah Wambui Ng'ang'a who is childless; that neither Moses Muiruri Ng'ang'a nor the said deceased's mother, Ruth Nyakio Gathiru has had anything from the deceased's estate; that the deceased's estate is extensive; that she, Ruth Nyakio Gathiru and Moses Muiruri Ng'ang'a have special needs owing to their respective ages and that they should get 60% of the deceased's estate while the petitioner/applicant should get 40% of the deceased's estate. I note from the supporting affidavit of the administratrix, Hannah Wambui Ng'ang'a sworn on 04.02.99 that she had sought to inherit the entire deceased's estate alone and that there was no application by any dependant pending in court. The administratrix's then averred position was altered when the court declared Moses Muiruri Ng'ang'a and the deceased's mother, Ruth Nyakio Gathiru as dependants of the deceased. These two dependants do not seem to have received any form of support from the deceased's estate as the court found they should have. Now that Moses Muiruri Ng'ang'a and Ruth Nyakio Gathiru have been accorded recognition as the deceased's dependants, I am of the respectful view that the first step towards determining what may be reasonable dependency for them is for them to be provided with a valuation report of the deceased's estate and also to be furnished with accounts on the assets and liabilities of the said estate. Thereafter reasonable dependency may be worked out based not just on the two objectors'/respondents' needs but also on what the estate can offer, bearing in mind the petitioner's/applicant's claim as well. Accordingly, I direct as follows:-

1. The petitioner/applicant to file and serve a valuation report of the deceased's estate plus accounts on the assets and liabilities of the said estate within 60 days.
2. The objectors/respondents to quantify their needs backed up by requisite evidence and file and serve the same within 60 days.
3. Mention on 24.12.07.
4. Costs in the cause.

Orders accordingly.

Delivered at Nairobi this 23rd day of October, 2007.

B.P. KUBO

JUDGE