



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

**Succession Cause 2141 of 1998**

***IN THE MATTER OF ESTATE OF RACHEL WAIRIMU MBUGUA***

***DECEASED***

**RULING**

The deceased herein was a widow of Paul Mbugua Mukora. The other two co-widows namely Njeri Mbugua and Jacinta Watiri Mbugua filed an application for revocation of the grant of representation issued to brothers of the deceased herein namely Rachael Wairimu Mbugua.

It is not contested that the grant of the letters of representation for the estate of the deceased's husband were given to his three widows who are the deceased and two objectors.

In the meantime the deceased died and her brothers applied for grant of representations for the deceased's share in her husband's estate. The deceased did not have any children.

It is also clear from the record of the cause that the Administrators/brothers, after earlier affirming that they did not have any sisters in replying affidavit sworn on 8<sup>th</sup> September 2000, relented and in further affidavit sworn on 2<sup>nd</sup> February, 2001 have stated that they had four married sisters who have consented that the grant be given to them as well as they have filed their respective renunciations of right to inherit.

The Objectors based their application for revocation on the grounds shown on the face of the application and affidavit of Njeri Mbugua one of the objectors sworn on 3<sup>rd</sup> February, 1999.

In nutshell they are stressing that they are the rightful beneficiaries of the deceased being her co-wives and that they have been granted letters of Administration jointly for their husband's estate in H.C. Succession Cause No.60 of 1996. They further stress that the Petitioners are not children of the deceased and have concealed the fact of their existence.

So far as their last contention is concerned, I do not think they are right, as in the petition the names of the two widows/objectors are disclosed and what the Petitioners are seeking is, the share of the deceased in her husband's estate.

The Learned Counsel for the Objector Mr. Kituku relied on the Kikuyu Customary law to the effect that the estate property should be shared within the husband's homestead. He also stressed and relied on a Court of Appeal case between **Julius Wainaina Mwathi and Beth Mbene Mwathi and another CC.A. No.123 of 1992** (unreported).

In the said case, after agreeing with the superior court's decision that the Will in question was not

valid, the Court of Appeal differed on the issue of distribution amongst brother and sisters of the deceased without indicating any provisions of the Act. They determined that the piece of land be devolved as per Kikuyu Customary Law and relying on Customary Law the Judges said that the sisters do not inherit the brother's land.

I may not have to comment on the aforesaid findings as the present case is totally distinguishable on the facts of this case, and thus I may not rely on the observations made therein by the Court of Appeal.

Mr. Chege the Learned Counsel for the Petitioners on the other hand relied on clear provisions of Section 39 of the Law of Succession Act. (Cap 160 Laws of Kenya and referred '*the Act*'). I may also make observation at this stage, that provisions of the Act Section 2(1) stipulates as to application of and I quote:

***“1. Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testament succession to the estates of deceased persons dying after the commencement of this Act and to the administration of estates of those persons.”***

Sub Section 2(2) of the Act specifically stipulates that the estates of the persons dying before the commencement of the Act are subject to written law and customs applying at the date of death.

Furthermore, as per sub-sections 3 and 4 of the said Section, it is only the testate or intestate estate of Muslims are exempted from the application of this Act.

I thus do not harbour any doubt in my mind that a person who dies after commencement of the Act (which is 1<sup>st</sup> July, 1981) his estate shall be governed by the provisions of the Act. The estate of the deceased herein is one such case.

As hereinbefore observed, it is not disputed that the deceased herein was a co-widow and inherited that share in her husband's estate. That share, which is a part of property in question, became her own property on such devolution. She died after inheriting the said share and thus left that share in her intestate estate. She did not have children, her husband had predeceased her, so were her parents.

Her estate thus shall devolve as per provisions of Section 39 of the Act which has not made any distinction between a married male or female. Such distinction, in my view, shall be in breach of the Section 82 of Constitution of Kenya which has guaranteed equality of sex.

The estate of the deceased herein, as per law, shall thus devolve on brothers and sisters in absence of father or mother.

The applicants are brothers of the deceased and which fact is not in dispute.

The Objectors have no right to inherit the estate of the deceased as per the Act.

They do not have thus locus standi to make any application in this estate and thus their application seeking revocation of the grant issued in this cause is dismissed with costs.

In the end I can only observe that I cannot associate myself with the idea that once a married woman inherits her husband's property, upon her death the same shall have to revert to the family of her late husband.

**K.H. RAWAL,**

**JUDGE**

**2.5.06**