



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT NAKURU**

**Succession 422 of 2001**

**PENNY MAINA.....1<sup>ST</sup> PETITIONER**

**BARBARA WANJALA.....2<sup>ND</sup> PETITIONER**

**VERSUS**

**BRIAN KIPTOO MAINA.....OBJECTOR**

**RULING**

The late Noah Tanui Maina (hereinafter referred to as “*the deceased*”) died on 23<sup>rd</sup> June 2001. He was survived by the first petitioner, Penny Maina and four children namely Barbara Wanjala, Maurice Kipkoech, Everline Cherotich and Dennis Kiprob.

The petitioners herein applied for letters of administration for the estate of the deceased. The objector, Brian Kiptoo Maina, also applied for grant of letters of administration and stated that he was a son to the deceased. On 28<sup>th</sup> July 2004, letters of administration in respect of the estate of the deceased were by consent issued to the parties herein that is, Penny Maina, Barbara Wanjala and Brian Kiptoo. A dispute arose regarding the distribution of the deceased’s estate.

The deceased was a member of Teleposta Pension Scheme and according to a letter dated 7<sup>th</sup> April 2005 which was addressed to the court by the secretary, board of trustees of the said Teleposta Pension Scheme, the benefits that were payable to the deceased were as follows:-

- (a) a widow’s/dependant gross pension – Kshs.59,681/- p.a. payable monthly for five years from 23<sup>rd</sup> June 2001.
- (b) a gross cash lump sum of Kshs.839,520/-.

After the death of the deceased, in compliance with the Teleposta Trust Deed and Rules, the widow of the deceased was introduced in the monthly dependants pension payroll in May 2003 and had been paid half the dependants pension. The total amount that had been paid to the widow as at 30<sup>th</sup> April 2005 was

Kshs.115,033/-. The pension scheme indicated that it was still holding a sum of Kshs.839,520/-.

Apart from the said benefits, no other asset was disclosed in Form P&A.5. However, in his application for confirmation of the grant, the objector stated that the deceased also had a motor vehicle registration number KXP 326 and a parcel of land at Kapsimot. The petitioners also made a similar application for confirmation of grant and disclosed that the deceased indeed owned the aforesaid motor vehicle and a parcel of land at Kapsimot as stated by the objector. None of the parties gave the reference number of the said parcel of land, nor its size. In their submissions, the petitioners stated that the objector was a step son to the deceased and that all the children of the first petitioner were in school. The first petitioner was the one who was paying their school fees.

With regard to the pension benefits, the applicant's counsel urged that the gross sum of Kshs.839,520/- be paid to the first petitioner as she was the immediate beneficiary of the funds. She would be able to use the same for the education of her children. Alternatively, counsel submitted that one quarter of the said funds be paid to the objector. The petitioners urged the court to order that motor vehicle registration number KXP 326 be given to Penny Maina and the parcel of land at Kapsimot be divided equally amongst all the beneficiaries.

On the other hand, the objector's advocate submitted that the objector was a student at KCCT College, Nairobi and had been out of college for one year due to lack of college fees and that the deceased was educating him prior to his death. He was therefore entitled to be supported by the estate of the deceased to complete his college. He told the court that the objector was a son to the deceased by virtue of the deceased's first marriage to the objector's mother, which marriage did not work out. He urged the court to consider that the first petitioner had been paid over Kshs.100,000/- and order distribution of the balance of Kshs.839,520/- equally between the petitioners and the objector. He added that the first petitioner was in gainful employment and was not depending entirely on the estate of the deceased for her well being. Regarding the motor vehicle and the parcel of land at Kapsimot, the objector urged the court to distribute the same amongst the beneficiaries in whatever manner that it deemed fit.

From the foregoing, it is evident that the deceased had married more than once. The first wife with whom they separated and the first petitioner. The objector is a son of the first wife. After he separated with the first wife, he continued to maintain the objector as his son and was indeed educating him until the time of his demise. In the circumstances, the estate of the deceased should be distributed in terms of the provisions of **Section 40(1) of the Law of Succession Act**. The same provides as follows:-

***“40(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.”***

Considering that the first petitioner was staying with the deceased together with their children upto the time of his death, all the deceased's personal and household effects shall go to the first petitioner. That will include motor vehicle registration number KXP 326. With regard to the pension benefits the same will be divided among the two houses of the deceased according to the number of children in each house. The first house has only the objector and the second house has the first petitioner and her four children (five units). The sum of Kshs.839,520/- will therefore be divided amongst six units with each unit getting Kshs.139,920/-. The objector will therefore be entitled to Kshs.139,920/- and the rest of the money amounting to Kshs.699,600/- should be paid to the petitioners who will hold in trust the portion that belongs to the deceased minor children. Likewise the parcel of land at Kapsimot will be divided between the two houses using the same formula. The objector will get 1/6 of that land and the rest will go to the petitioners who will hold the same for their benefit and in trust for the other children of the deceased. The grant of letters of administration earlier issued to the parties is confirmed. The costs of these proceedings shall be paid by the estate.

DATED, SINGED and DELIVERED at Nakuru this 26<sup>th</sup> day of October, 2006.

**D. MUSINGA**

JUDGE

Ruling delivered in open court in the presence of Mr. Olonyi holding for the Orina for the objector and Mis Opati holding brief for Nancy Njoroge for the petitioner.

**D. MUSINGA**

JUDGE