



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 2645 OF 2003

IN THE MATTER OF THE ESTATE OF KELLINGTON MWANZIA MUSYOKA

(DECEASED)

RULING

Pollyne Chepo Sitienei petitioned for the Letters of Administration in respect of the estate of the late Kellington Mwanzia Musyoka deceased who died intestate on the 20th April 2002. The petitioner indicated that she is the only survivor of the deceased and the grant of Letters of Administration was issued to her on 13th November 2003.

On 16th February 2004 the applicants Musyoka Nzia and Kaurata Musyoka being the mother and father of the deceased respectfully applied for the revocation of the grant that was issued to the petitioner on the ground, that the grant was obtained by concealment from the court that the applicants were dependants of the deceased and that the grant was obtained fraudulently by making of a false statement.

During the hearing the parties gave oral evidence and relied on the affidavits on record. On the part of the objectors, they argued that they depended on the deceased, who used to assist them in many ways, including buying for them clothes and he was even planning to build a house for them. He had prepared the building stones towards the arrangements for building a house.

Immediately the deceased passed away they attended a meeting that was convened by the deceased employers who was working with the Armed Forces under the chairmanship of Major Muchendu. The Agenda of the said meeting was to discuss;

- i) House construction at home for late Mwanzia's wife
- ii) List of benefits
- iii) Distribution of benefits

The meeting resolved and all those who were present agreed that

“The remaining benefits should be distributed to the two parties on the basis of 50% basis less sink fund which was to be left to the late's wife. This was consented by all.....”

This agreement was signed by the applicants and the petitioner and duly witnessed by four persons.

It is for this reason that the applicants now argue that they were sidelined and left out when the petitioner sought for the grant of representation and did not include them as dependants of the deceased. They have no objection if the agreement that was entered into is followed to the letter and they said all the benefit including the Group Personal Insurance Compensation.

The applicants recognize the petitioner as the deceased wife although they were not invited in the mass wedding ceremony between the deceased and the petitioner which solemnized and regularized the customary marriage. No customary law ceremonies of marriage were performed as indicated in the marriage certificate a factor that made the applicants doubt the existence of the wedding ceremony but in view of the marriage certificate they changed their position.

On the other hand the petitioner maintained that the applicants have already taken their due share of dependency from the deceased estate. They have already been paid Kshs.26,821/20 and a further sum of Kshs.214,000/=. The remaining sum of about Kshs.690,000/= by Group Personal Assurance Compensation should go to her to compensate her for the loss of her husband as she was the most affected by the death of her late husband.

I have given this matter and the issues raised careful consideration. Although the applicant sought for the revocation of the grant on the basis that the same was fraudulently obtained, during the hearing they adduced evidence on the issue of dependency. Consequently I have to determine the twin issues of whether the grant was properly obtained and what provision for dependency should be made for the applicants.

As regards the first issue, the petitioner is entitled in priority to apply for the grant of Letters of Administration, however, the petitioner should have listed the applicants as disclosed dependants, having shared the deceased benefits and having agreed to share with them 50% of all the assets.

The estate of the deceased should therefore be administered as provided for under Section 36 of the Law of Succession.

“Where the intestate has left one surviving spouse but no child or children, the surviving spouse shall be entitled out of the net intestate estate to –

a) personal and household effects of the deceased absolutely: and

b) the first ten thousand shillings out of the residue of the net intestate, or twenty per centum thereof whichever is the greater; and

c) a life interest in the whole of the remainder: provided that if the surviving spouse is a widow, that life interest shall be determined upon her remarriage to any person.

3. Upon the determination of a life interest created by subsection (1), the property subject to that interest shall devolve in the order of priority set out in Section 39”.

Hence the petitioner is not given absolute powers and rights of the deceased estate according to my humble understanding and reading of Section 36 of the Law of Succession.

The applicants are the deceased parents they adduced evidence of how the deceased used to support them. This explains why the deceased former employers shared the identifiable assets on equal basis.

Although counsel for the petitioner argued that the Group Pension was not part of Service Benefits, if it was the residue of the deceased estate under Section 36 the petitioner would be entitled to a twenty per centum thereof. If it is not a residue but the remainder of the estate the widow is entitled to a life interest. This being a cash benefit, it would be more of a “residue”

Having taken all the matters into consideration and the circumstances of the applicants, as well as all material that was placed before me, I am of the humble view that even the remaining estate should be shared equally between the petitioner who should get 50% and the applicants to share the other 50% between themselves. I am satisfied that the applicants fall within the meaning of dependants under Section 29 (b) of the Law of Succession Cap 160.

This being a family matter let each party bear their own costs of this litigation.

It is so ordered.

Ruling read and delivered on 10 day of May 2005

MARTHA KOOME

JUDGE