



REPUBLIC OF KENYA



**In re Estate of Peter Kimani Mwathi (Deceased) (Succession Cause 2383 of 1997)
[2005] KEHC 845 (KLR) (Family) (30 September 2005) (Judgment)**

In Re Estate of Peter Kimani Mwathi (Deceased) [2005] eKLR

Neutral citation: [2005] KEHC 845 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 2383 OF 1997

MK KOOME, J

SEPTEMBER 30, 2005

IN THE MATTER OF THE ESTATE OF PETER KIMANI MWATHI (DECEASED)

JUDGMENT

1. The outstanding issues for determination in this Succession Cause is the mode of distribution of two plots namely:

Title No. Ngong/Ngong 16694 and Title No. Ngong/Ngong 16695.

2. The dispute involves the widow of the deceased and the deceased mother. The rest of the deceased estate was distributed by consent, thus the widow was allocated Title No. Ngong/Ngong/7054 being a residential house while the deceased mother was allocated Title No. KTK/Ngama/1154 and a residential plot at Loitoktok. Both parties adduced oral evidence, the Objector, the deceased mother advanced claims for one of the plots. She relied on her own evidence and that of her son, the brother of the deceased. According to their evidence the deceased was not married to the Co-Administrator Winnie Wariara Kimani as there was no customary ceremonies nor was she introduced by the deceased as his wife. They argued that the deceased was married to another woman, the mother of two minor children who were left under the care of Teresia Wambui Mbugua the mother of deceased and in this regard, she was pursuing the interest of these two children. She produced two birth certificates, both were issued on 11th May, 2005 for a child called Teresiah Wambui born on 3rd March 1989 and Mary Njeri born on 12th November 1990. The Objector stated that both children are in primary school and are in her custody care and control.
3. In the opinion of the Objector, the Co-Administrator, the deceased widow was left a plush home in the up market Ngong Town which is valued a lot of money and although she was left with a minor child, the allocation of the house and plot would be reasonable provision for her and the child.



4. On the other hand Winnie Wariara Kimani countered the Objectors evidence, she gave evidence in support of her claim that both plots should be allocated to her. According to the Applicant, she married the deceased in 1994 and they were blessed with one childaged about 10 years. As at the time the deceased met his untimely death, the child was only 3 years old. Since the death of her husband she has been in possession of the Ngong plots while the deceased mother is in possession of an agricultural parcel of land in Loitoktok and a commercial plot. She would like to retain both plots in Ngong as she has the responsibility of bringing up the deceased child as well as supporting herself.
5. She denied having any knowledge of the alleged children of the deceased whom she dismissed as non-existent and a mere ploy by the Objector to dispossess her of her rightful entitlement. The Applicant also relied on the evidence of her witness Boniface Isaac Muturi who was the deceased friend and a business partner. This witness confirmed that he knew that the Applicant was the deceased wife, he knew that the deceased and the Applicant were living as a married couple in Buru Buru and later they moved to Ngong area. This witness confirmed that he knew the deceased family, his brothers and he had even visited their rural home in Loitoktok.
6. I have carefully evaluated the evidence adduced by both parties. According to the records on 5th November 1997 Winnie Wariara Kimani petitioned for Letters of Administration while describing herself in the petition as the widow of the deceased and the only survivors of the deceased are herself and Teresia Wambui a daughter (aged 2 years).
7. On 15th January 1998, Teresiah Wambui Nganga filed an Objection to the issuance of the Grant of representation as well as a cross petition for Letters of Administration intestate.
8. According to the Objector, the deceased died and was survived by his mother and eight brothers and sisters. There is no mention of the two children whose birth certificates letters produced and which were issued on 11th May 2005 when the hearing of this dispute was on going. Subsequently, a consent order was recorded whereby the Grant of Letters of Administration was made to both the widow and the mother of the deceased. This was followed by a further consent on how some of the deceased properties were to be shared between the deceased mother and the Applicant.
9. In view of these consents whereby the Objector agreed to co-administer the estate and share the property of the deceased.
10. I find the evidence of the Objector that the Applicant was not a widow of the deceased not plausible and an afterthought.
11. Similarly, the Objector's claim that the deceased left two children born of an earlier marriage also left a lot of gaps. The only evidence produced by the Objector regarding these children were birth certificates which were issued on 11th May 2005. The mother of these children did not give evidence, although the Objector claimed that she disappeared immediately they were born, had relatives of the children's mother, their maternal grand parents.
12. These children did not even attend Court even if it is merely to be seen by the Court, bearing in mind they are aged only 16 and 15 years respectively. This anomaly complied with the fact that the Objector did not name these children as survivors of the deceased when she cross-petitioned for Letters of Administration left a lot of doubts on my mind as to this credibility of the Objector's evidence.
13. Accordingly I dismiss the Objector's claim for one of the plots and find that the two plots should vest upon the Petitioner Winnie Wariara Kimani for life and in trust of the deceased child.
14. This being a family matter each party should bear their own costs.



15. It is so ordered.

JUDGMENT READ AND SIGNED ON 30/9/05.

MARTH KOOME

JUDGE

