



REPUBLIC OF KENYA



In re Estate of Benson Joseph Omondi (Deceased) (Succession Cause 1183 of 2002) [2004] KEHC 2316 (KLR) (Family) (30 April 2004) (Ruling)

IN THE MATTER OF THE ESTATE OF BENSON JOSEPH OMONDI AWINYO (DECEASED)[2004] eKLR

Neutral citation: [2004] KEHC 2316 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 1183 OF 2002

MK KOOME, J

APRIL 30, 2004

IN THE MATTER OF THE ESTATE OF BENSON JOSEPH OMONDI AWINYO (DECEASED)

RULING

1. This is an application for dependency brought by the deceased father Philip Osok Awino. The deceased who was aged 35 years of age died on 17th December 2001 intestate. He was survived by the widow Faiza Gachaki Awinyo aged 33 years. They had no children. Prior to death the deceased was working with P & O Nedlloyd East Africa. According to a letter by the said company where the deceased was working the following were his entitlement
 - a) a motor vehicle, Nissan saloon Reg. KAK XXXX
 - b) Pension Kshs.141,874.00
 - c) Group life Kshs.552,209.50
 - d) Macdal Savings Kshs.214,662.00Total Kshs.908,745.50
2. According to the affidavits filed by the applicant the deceased also had motor vehicle KZS XXX which was given to the applicant during the deceased life time but according to the petitioner, the vehicle was taken away by the deceased relative when the deceased passed away.
3. The applicants request for provision of dependency is premised on the grounds that the deceased was giving him regular assistance in form of clothing, farm inputs and cash totaling to about Kshs.5000/= per month. That the deceased mother and brother were also dependants of the deceased in that the applicant is retired from active employment and only relies on subsistence farming of 2 acres of land. The deceased mother is also retired as a primary school teacher and has no income. The deceased was



also contributing to the school fees for his brother who has now been discontinued from his studies at the polytechnic.

4. Before the deceased died he had appointed his widow Faiza Gachaki Awinyo as the beneficiary for the pension fund and Group life. He also appointed his mother Nillie B. Osok the beneficiary of Macdal Savings & Credit Society. The petitioner has no objection the sum of Kshs.214,662 being allocated to the parents of the deceased together with the motor vehicle KZS XXX. She however contends that the applicant, his wife and son are not desperate. Both parents are retired and enjoying their pension. They are also involved in farming and selling of groundnuts both from their farm and neighbours. They also have support from the deceased other siblings. On the other hand the petitioner has to pay her own house rent, transport, food and medical expenses.
5. The court was requested also take into account of the cause of death of the deceased whose death was as a result of pneumonia due to tuberculosis due to immune suppression. This will in effect mean that the petitioner will require medical bills attention and, better nutrition and a diminished capacity to continue working.
6. I have taken due consideration of the submissions by both counsels, the affidavits filed herein and all the matters deposed to. I have also considered the matters that I should consider under the part III of the Law of Succession.
7. The court has discretion to order that a specific share of the deceased property be given to the dependant but in doing so the court should take into account certain circumstances such as those provided under Section 28 of the Law of Succession.
 - a) The nature and amount of the deceased's property.
 - b) Any past, present or future capital or income from any source of the dependant
 - c) The existing and future means and needs of the dependant
 - d) Whether the deceased had made any advancement or other gift to the dependant during his life time.
 - e) The conduct of the dependant in relation to the deceased
 - f) The situation and circumstances of the deceased's otherdependants and the beneficiaries under any will
 - g) The general circumstances of the case, including, so far as be ascertained, the testators reasons for not making a provision for the dependant.
8. I have taken into consideration the fact that the applicant and the deceased mother are pensioners. They have other children apart from the deceased from whom they can continue to depend on. I have also taken into account the circumstances of the petitioner, especially the position of her health and the possible implications arising out of the cause of the death of her husband. I have also taken into cognizance that the applicant is in possession of the motor vehicle KZS XXX which can be regarded (whichever way one looks at it) as a gift intervivos and the fact that the deceased had appointed his mother as beneficiary of the Co-operative Savings amounting to Kshs.214,662/=. I therefore order that a first sum of Kshs.100,000/= be allocated to the applicant as dependency in addition to the vehicle KZS XXX. The estate is therefore allocated as follows:
 - a) Motor vehicle Reg. KAK XXXX
Pension Kshs.141,874



Group life Kshs. 452,209.50

Total 594, 083.50 to petitioner

b) Kshs.215,662 to Nellie B. Osok

c) Motor vehicle KZS 805 and

Kshs.100,000/= - to the applicant Philip Osok Awino.

Each party shall bear their own costs to this litigation.

It is so ordered.

RULING READ AND SIGNED ON 30TH APRIL 2004

MARTHA KOOME

JUDGE

