



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

H.C. SUCCESSION CAUSE NO. 269 OF 1993

**JULIET WAVET MUCHIRI & ANOTHER ..... PETITIONER**

***V E R S U S***

**NJERU KATHENDU..... RESPONDENT**

**R U L I N G**

The applicant is the father of the deceased. His attempt to be granted the letters of administration failed as the wife (the Respondent herein) was allowed to file her petition. Now he has filed this application as dependant of the deceased under section 29 of the Laws of Succession Act. In short he wants his share.

Although it became evident that the vehicle, a cow and a calf and water pump - some of the properties mentioned as the estate properties were in his possession, he did not mention that fact in his affidavit. He has mentioned the value of the vehicle as Kshs.150,000/= which has been in his possession. According to the wife the same is vandalized and cannot be more than Kshs.20,000/= in value. It also became evident that the father is not as destitute as he claims to be as he cultivates the land from which he earns the income and has the income from Daily products. These averments made by the wife are not controverted. The father has also not controverted that he has many other children who are also supporting him, and that he has kept several household things of the deceased against the wishes of the wife.

I also take note that the father has not substantiated any of his claims on dependency. However I will also not overlook the deep rooted culture of our country that the children always look after the parents when in need.

The question which is before me is to decide whether after what he has already possessed from the estate property, the father has made out a case against the wife to get more.

As mentioned earlier it seems, at present the father is not a person who needs any portion of estate property apart from already possessed by him. The wife now has another child which has to be catered for by her from her income. I must stress here that the child born is not a child of the deceased and he was not maintained by him prior to his death. Thus this second child has no claim on the estate hereof. It is only the first child of the deceased who is the beneficiary of the estate and she being a minor has to be catered for with special attention and care by this court.

The upshot of all the above is that the application by the father is not allowed. Both parties to meet their own costs.

Having said this, I cannot hoodwink at the fact that the wife has used the estate money improperly and against the provisions of the Law. It is apparent that the deceased left Kenya Shillings 450,000/= in Barclays Bank, Mombasa Branch and the wife has now deponed that only Kshs.50,000/= is remaining in that account. This court shall not take lightly of this improper action of the petitioner/ wife and direct, under the provisions of rule 73 of the Probate and Administration Rules, that the wife tender proper accounts of the sums used by her from the said account. She shall support her accounts with appropriate Bank statements, invoices and receipts.

The said accounts shall be furnished within 21 days from the date hereof. This matter shall thereafter be mentioned on the date convenient to the court and counsel for the parties.

Dated and delivered at Nairobi this 19th day of May, 2002.

**K. H. RAWAL**  
**J U D G E.**