



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO. 2358 OF 1996**

***IN THE MATTER OF THE ESTATE OF JAMES ARAN NJAU***

***KIBUE (DECEASED)***

**JUDGEMENT**

The petitioner A W K is the petitioner herein. She got married to J A N K (now deceased) at [particulars withheld] on 6th February, 1960.

The couple lived in various places including Nyeri, Kileleshwa, Waitthaka and then Ridgeways where they owned 3 (three) plots, Numbers [particulars withheld]. The fourth plot No[particulars withheld] was sold.

According to the petitioner, her residential house is on plot No[particulars withheld] while plot number [particulars withheld] is planted with coffee while plot No[particulars withheld] has 2 houses, one uncompleted and the other completed and rented.

The couple had 8 (eight) children out of the marriage, 4(four) boys and 4(four) girls.

The deceased died on 24th January, 1996 and after his burial the petitioner filed an application in this court for letters of administration in respect to his estate on 27th March, 1996.

It is then that an objection was filed by J J N and P K to the petition on their own behalf and that of their 3(three) sisters.

In the meantime, during the deceased funeral arrangements the objectors and their sisters had surfaced their to declare their relationship to the deceased and to claim that their mother R (or R) W had been wife to the deceased. She died in 1979.

The two objectors testified in the case with the objector P K M saying he was born at [particulars withheld] estate on 1st December, 1959.

According to his evidence their deceased father never used to visit them while at [particulars withheld] but that later they moved to [particulars withheld] where he visited them at night daily though not on permanent basis.

That after their mother died in 1970, the deceased visited them at [particulars withheld] for sometime and then he disappeared but that this objector occasionally visited him at his [particulars withheld] office.

According to this objector it is his mother who paid fees for his school.

This objector was sometimes unclear in his evidence because at one time he said his mother died in 1970 and yet at another time he said he had joined the army sometime after 1978 and left it in 1984 to

start a small business which was run by his mother. That at this business stall, the deceased used to visit the objector.

This objector testified that though he knew the deceased lived at [particulars withheld] with the petitioner and their family, he never visited them there and that he was only told about the deceased death by a neighbour who worked at the city market. That he then contacted his brother and sisters and they went to the funeral and participated in the arrangements, though not materially.

That even after burial of the deceased, the objector were invited to the deceased house together with their sisters for a get together and even went back to bid farewell to a step sister who was going back to Europe after attending the deceased burial.

This objector insisted during cross examination that their official home is still [particulars withheld] where the deceased never visited until his death. That though he knows the deceased ancestral home to be at [particulars withheld], he had never visited it save to go there to see his agemate called K but never explain the relationship of this boy with the deceased family.

Neither did he say what his occupation is or whether the deceased ever provided for him and/or his brothers/sisters or what, if any, this was, before his death.

Another objector J N repeated most of what the first objector told the court save add, that the deceased used support them financially or pay fees for his brothers and sister, something that first objector never mentioned in his evidence.

He also said that one time in 1972 the deceased had given him a lift in his vehicle and had asked him to take all members of the family to the deceased home at [particulars withheld] which he did.

But that when this objector took the family to the deceased home at [particulars withheld], the latter was called and did not disclose why he had called this meeting. That since then, the objectors and their brothers/sisters did not go back to the deceased home.

This objector produced some notes, exh. P1 and P(a) indicating that the deceased had assisted one of the objector's sisters change schools and so forth.

This objector stated that he and his brothers/sisters consider themselves as partners to the deceased estate and that the petitioner as head of the family should do justice to all the deceased children.

He repeated that after burial of the deceased the petitioner invited them to a get together party where they introduced themselves to each other and that it was actually him who was responsible for his brothers/sisters while young.

The petitioners evidence agreed that the objector's had attended the deceased funeral but that this was the first time she saw them.

That when they first appeared at the funeral committee, a drunken girl pushed herself at the door to be noticed and remarked some obscenities which surprised everybody there.

That because of this behaviour the group was ordered out of the deceased compound only to come back next day minus the drunken girl, whose name was given as N W.

That at one time the objectors wanted to be introduced to the funeral committee but the petitioner refused to do so and there was some kind of nusty exchange.

That one of the petitioner's daughters, E, asked the objectors' to say what they wanted before the deceased was buried and or before she left back to England after his burial but they said they were well established and did not come there to disturb the petitioner but only to be considered part of the deceased

family and or for the petitioner to consider them at her children.

That after the deceased was buried on 30.1.96, the parties agreed to meet together so that the objector and their other kins would bid farewell to those going back to England, including E. This meeting was held on 31.1.96 and another get together meal was served.

The petitioner denied meeting the objectors and or their other kins either in 1972, 1982 or any other time except after the deceased died. She said her father in laws house in their rental home was opposite hers and she never saw the objectors there anytime.

About exhibits P1 and P1(a) the petitioner said the deceased could have helped many people.

One J M K (PW3) testified for the objectors to say during the deceased funeral, the objectors' came there and claimed they were his children and that after the funeral all were photographed.

This witness also stated he was the spokesman of the deceased family.

For the petitioner, S N K (DW2) testified as a witness. She repeated what were considered to be obscene remarks by the objector's sister at one of the funeral committee meetings.

She also attested to the gathering of the family after the deceased burial and now the objector and other kins came to bid farewell to her two sisters and brother who were returning to England.

That soon after the burial of the deceased she came home from work one evening only to find the objectors' in the house discussing with her mother over this objection case.

T W N (DW3) also testified in the case on behalf of the petitioner to deny that the deceased had married any other woman before marrying the petitioner.

The issue of an affiliation case between the deceased and another woman objectors' mother came up at appears to have been heard of by the petitioner too. But with the repeal of the Affiliation Act all that appertained to it fell by the wayside.

Counsel for both parties submitted in the case and prayed that the court do grant letters of administration to their respective clients.

This is the evidence adduced in these objection proceedings for the courts' consideration and decision.

From the objectors evidence, they were born in 1959 and 1953 respectively. This was before the petitioner married the deceased on 6.2.1960.

This means, there could have been a relationship between the deceased and the mother of the objectors much earlier but to my mind this relationship did not result in what would have been called a marriage between them and this is why there was this talk about affiliation proceedings between the two though the year thereof was not given.

That the deceased could have had relationship resulting in the birth of the objectors was not very much in dispute; what was in dispute was really whether such objectors and/or their other kin were entitled to part of the deceased estate after his death.

The objectors testified that after their mother died in 1970 the deceased did not visit their [particulars withheld] home from around 1972 – 3.

And thereafter there was no credible evidence that the objectors were close to the said deceased. The first objector does not seem to have met the deceased thereafter except once or twice at the mother's previous business stall.

And though the second objector attempted to say the deceased used to give him a lift in his motor vehicle, I was not convinced this ever happened.

More importantly, during the last days of the deceased as a sick man, the objector's were nowhere and they seem to have heard of his death either through friends or advertisements in the newspapers.

The objectors were mature people at the time of the deceased death but do not seem to have visited him with a view of being included in the acquisition of his estate or even to notify him that he had not provided for them in form of property during his life time.

And even when they came to the funeral, E specifically asked them if they had any request to make before she left to England, to avoid disturbing her mother, the petitioner, when she was away but they said they only wanted recognition as the deceased children. There was no denial of this.

Even at that funeral they adduced no evidence to show they contributed anything. They were just like any other mourner. They claimed nothing from the estate even during the latter get together after the deceased burial.

Then afterwards the objectors' came to the petitioner's house to ask about letters of administration to the deceased estate. S N (DW2) found them there and the mood was tense. It must have been because the petitioner did not expect such thing. She had been assured all was well during the funeral and that the objectors would claim nothing from the deceased estate.

In my view this is one of those unique cases where I am convinced the deceased must have provided for the objectors and their brothers/sisters but that they did not want to reveal this so as to get more from the petitioner who only came to know of their existence during the deceased funeral.

They were not honest, otherwise they would have attempted to make this known during the deceased lifetime.

I am afraid, I cannot intervene in this matter in the objector's favour at this late hour. This would be tantamount to interfering with the deceased estate over which it is only the petitioner who is entitled to letters of administration.

The objector's have not convinced me they have any such right.

I dismiss their objection with costs.

Delivered and dated this 7th day of May, 2001.

**D.K.S AGANYANYA**

**JUDGE**