



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
SUCCESSION CAUSE NO.302 OF 1999**

IN THE MATTER OF THE ESTATE OF THE MICHAEL KAMAU KAHIRI (DECEASED)

JUDGMENT

After being bed ridden for some considerable months as a result of a road accident, Michael Kamau Kahiu expired on the 22.11.98.

His mother and one Daniel Wandagwa Kahiri who claims to be his brother applied for letters of administration intestate. The gazettement of their intention to apply for such letters were done after notice dated 16.2.99 was done.

Lydia Njeri Riguini then filed objections to the making of such grant under rule 17 of the Probate and Administration Rules.

The parties appeared before me on 29.11.00 when this matter had been set down for hearing.

Lydia Njeri objected to the letter of administration intestate being issued to the mother and one Daniel who alleges to be the brother of the deceased. The reasons being that she had been proposed to by the deceased. She bore him two sons. The last born was born a day after the deceased was involved in a motor vehicle accident that left him paralysed.

When a suit was filed in court for damages, an award was given in favour of the deceased. His family, namely mother and brothers became hostile to her. They in fact chased her away.

It was she who had taken care of the deceased until the deceased mother took him away whilst they were in court. After one and a half months he died. She believes that he may not have been given the adequate care that may have been required.

She called her witness, who is also the paternal uncle to the deceased. He informed this court how it was he who was guardian to two children of his brothers, one being the deceased. Their father had died. He took the role as the father.

When the deceased showed interest of his intention of getting married, he introduced him to PW1. He went with the deceased to PW1 for the introduction ceremony. The mother to the deceased was not involved as the deceased wished. She participated later with the family. Further the deceased had been living with PW1 and bore two children. That the deceased had previously married. His former wife left him with two children.

PW1 stated it was her who was taking care of the children till they were forcefully removed from her by DW1 the mother to the deceased.

DW1 stated she never knew the witness PW1. She said that she came to know her here in court.

The major issue in this case is:-

”Whether the objector was the wife of the deceased Michael Kamau Kahiri?”.

For all intentions and purposes the deceased did not begin process of marriage between herself and the applicant. That the two cohabited together as man and wife. That PW1 has confirmed that he took the dowry and that the two were man and wife. The witness, PW1 also was able to deliver a child which was borne a day after the deceased accident.

I find that the objector was in the least a common-law wife. She was cohabiting with the deceased, had his children and was not there just for his money. She could have left a long time ago but did not.

Further PW1 produced an affidavit deposed to by the deceased and he described recognised her as a wife and how both required finance as none of them were working.

Issue No.2 is

“Whether the objector bore any children to the deceased?”

I would answer yes she did. That she in fact produce a birth certificate for the last born child. There were two children by another women/wife who has since left and remarried.

Issue No.3.

“Who was taking care of the deceased?”

From the evidence before court I would believe the objector. That it was her who all along took care of the deceased, save the last 11/2 months of his life.

Issue No.4

“Who is entitled to letters of grant”

According to the degree of consequity it is the objector who is entitled to letters of grant.

I hereby order and direct that the original grant herein be returned to this court. I further declare that the objector is entitled to letters of administrations intestate. I would do so jointly with the mother.

I accordingly award her the same on the grounds that she complies by filing forms 5,80,11,12,57. To do so jointly with the mother.

That this objection be and is hereby allowed with each party bearing their own costs.

Dated this 30th day of November, 2000 at Nairobi.

M.A. ANG’AWA

JUDGE