



REPUBLIC OF KENYA



**In re Estate of Joseph Karanja Gitau (Deceased) (Succession Cause
1383 of 2016) [2023] KEHC 3066 (KLR) (Family) (7 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 3066 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE 1383 OF 2016

EKO OGOLA, J

FEBRUARY 7, 2023

**IN THE MATTER OF THE ESTATE OF JOSEPH KARANJA
GITAU (DECEASED)**

RULING

1. This matter is partly determined. What remains for determination is the issue of whether Mary Njeri Kiromo is a beneficiary in the estate of the deceased. The court directed the parties to file formal documents in the form of Affidavits addressing the issue. The Administrators of the deceased's estate are Grace Wanjiku Ndirangu (hereinafter "the 1st Administrator") and Paul Mwangi Kironyo ((hereinafter "the 2nd Administrator").
2. The 1st Administrator filed an Affidavit dated 24th February, 2020. Mary Njeri Kiromo (hereinafter "the Objector") filed a Replying Affidavit dated 19th November, 2020 in response to the 1st Administrator's Affidavit. The 2nd Administrator filed an Affidavit dated 24th November in support of the Objector's case.

1St Administrator's case

3. The 1st Administrator avers that the Objector is a stranger to the estate of the deceased therefore not entitled to a share of the same. She stated that the Objector has not filed any formal documents stating her claims either through herself or through an advocate therefore she has no locus in this matter.
4. According to the 1st Administrator, the Objector deserted her marriage and children in 2002 leaving the children in the custody of the deceased. That the Objector was divorced by the deceased *vide* High Court Case number 13 of 2003 and a decree of divorce issued on 6th September, 2003. Thus the Objector is not a wife of the deceased.
5. The 1st Administrator states that the deceased was granted custody of her children with the Objector. According to the 1st Administrator, the Objector was cruel to the deceased, was an extortionist, deceitful and violent to the point of locking the deceased in the house and failing to open the door



unless the deceased gave her money; that the 1st Administrator lived with the Objector's children providing their every need together with the deceased.

6. The 1st Administrator avers that the Objector left for the United States without informing anyone; that she got remarried to one Vestyck Richards on 8th July, 2009 in Dallas Texas in the United States; that she got remarried before the deceased died meaning she is neither a wife, a surviving spouse or a former wife of the deceased.
7. The 1st Administrator states that the Objector is a woman of means living in the United States with her husband. According to her the objector should not be allowed to exercise greed in benefiting from the estate of the deceased while married to another man, at the expense of the legal beneficiaries of the estate of the deceased.

Objector's Case

8. The Objector states that she married the deceased as a second wife through Kikuyu Customary Law in 1989 when the 1st Administrator had deserted him for being poor with no prospects; that she jointly with the deceased acquired all the wealth in the estate of the deceased.
9. The Objector avers that due to irreconcilable differences with the deceased, she moved to the United States with her last born child Ruth Wambui Karanja and settled in Texas in 2003. That in Texas she had always received monthly maintenance from the deceased before and even after his death. She states that even after moving to the United States she continued visiting her late husband in Kenya.
10. The Objector claims that she has never been aware of any divorce case. That the succession cause was filed jointly. She appointed one Joseph Mwangi Gitau as an administrator to represent her interest in the cause. That the said Joseph died and was substituted with the 2nd Administrator herein.
11. The Objector avers that she even shared movable properties with the 1st Administrator as well as the cash at hand. During this time the divorce issue never arose. She stated that even the Judgment produced by the 1st Administrator as evidence for divorce is missing pages without any explanation from the 1st Administrator. She contends that even if there was a divorce which she has highly contested, under Kikuyu Customary Law a divorced wife is entitled to a matrimonial home.
12. The objector contends that she has never remarried. She has termed strange the documents and photographs attached by the 1st Administrator as a proof of the marriage.
13. The 2nd Administrator avers that the deceased had two wives Grace Wanjiku Ndirangu and Mary Njeri Kiromo. The deceased married both of them under Kikuyu customary law. The deceased had a matrimonial home for each of his two wives where each lived with their families. The Objector was married in 1989 and had three children with the deceased.
14. According to the 2nd Administrator, in the year 2002 the deceased and the Objector had differences which led to the Objector moving to the United States with their last born daughter. The other two children were left with their father. The deceased continued to support them in the United States. The Objector frequently visited the other children and their father.
15. The 2nd Administrator avers that the deceased jointly with the Objector acquired all the wealth listed in the distribution schedule. During the burial of the deceased, the two widows participated fully in the program. That after the burial the family had a meeting and agreed on how the estate of the deceased would be distributed. Since the Objector was going back to the United States, she appointed one Joseph Gitau Mwangi an uncle of the deceased to participate in Succession proceedings on her behalf. The succession proceedings began in 2016. Joseph was one of the Administrators of the estate



of the deceased. Unfortunately, the said Joseph passed on and the 2nd Administrator was appointed by the court to substitute him.

16. According to the 2nd Administrator, the 1st Administrator filed Affidavits claiming that the Objector had been divorced by the deceased. He states that the deceased never mentioned divorcing the Objector. He only became aware that there was a divorce case when the 1st Administrator filed the Affidavits in court. According to him, the divorce issue is a surprise since the deceased had not mentioned such a thing to him. The deceased was sending money to the Objector. The Objector was never re-married in the United States and is still a wife of the deceased.
17. The 2nd Administrator maintains that the Objector is a dependent and a beneficiary of the estate of the deceased. that according to Kikuyu customary law, even if a wife is divorced, she still retains the matrimonial home for herself and her children and further continues being a dependent. The 2nd Administrator is baffled as to why the 1st Administrator would share the estate vehicles and the cash at hand with the Objector then later claim that the Objector is a stranger to the estate of the deceased.

Determination

18. The issue before the court is whether the Objector herein is a dependent or a beneficiary of the estate of the deceased. From the Affidavits filed by the parties, it is not disputed by any of the parties that the Objector was married as a second wife to the deceased. The dispute is whether the Objector was divorced by the deceased. The 1st Administrator has argued that the Objector was divorced *vide* a High Court Civil Suit No. 13 of 2013. She has even produced a copy of the divorce Judgment and a decree dissolving the said Marriage. The 1st Administrator has also argued that the Objector did not only get divorced but that she also got remarried to one Vestyck Richards in Dallas Texas. She produced photographs and a document she terms as a marriage license to prove her case.
19. The Objector argued that she was not aware that there was a divorce case against her. She argued that the Judgment of divorce produced by the 1st Administrator was missing some pages without any explanation. She also contended that the documents produced by the 1st Administrator in an attempt to prove her alleged marriage to someone else do not prove that there was marriage.
20. I have examined the documents produced by the 1st Administrator. The copy of the Judgment attached is a photocopy. Indeed, pages 3 and 5 are missing. However, there is a decree that has been produced dated 16th September, 2003. The decree shows that the marriage between the deceased and the Objector was dissolved. The Objector claims that she was not aware of the existence of the divorce cause. If indeed the Objector was not aware of the divorce, she would have sought for avenues to have the court set aside the said judgment and decree the moment the issue of divorce was raised. As per the Objector, the 1st Administrator raised the divorce issue in two previous Affidavits. She did not seek to dispute the issue when she found out. The court has been provided with a copy of a decree dissolving the marriage between the deceased and the Objector. So far as the court is concerned, the document proves that the marriage was dissolved.
21. The documents that the 1st Administrator has provided to prove that the Objector got remarried however do not prove the same. What the Administrator has termed as a certificate of marriage between the Objector and one Vestyck Richards does not have a title. The document marked GWN 3(a) only shows a list of names and does not explain what those names are for. The Photographs provided and marked GWN 3 (b)-(e) show some people. The 1st Administrator has not explained who the people in the photographs are and how they are related to this matter. The document and the photographs do not prove any marriage therefore the argument that the objector got remarried does not hold.



22. This therefore means that the Objector is a former wife of the deceased. Section 26 (a) of the Law of Succession Act defines a former wife as a dependant. It states as follows: -
- “Dependant means the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death”
23. The Objector has attached a document showing that she received an amount of money from the 1st Administrator on 18th May, 2020. The 1st Administrator has stated that even if the objector used to receive money from the deceased or from the estate of the deceased, its purpose was to maintain the children. However, in the definition of a dependent, it is not necessary for one to have been maintained by a deceased person so as to qualify as a dependent.
24. The question before the Court was to determine whether the Objector is a dependent of the estate of the deceased. Since I have already established that she is a former wife of the deceased, by virtue of Section 29(a) of the Law of Succession Act, she is a dependant entitled to a provision in the estate of the deceased as per section 26 of the Law of Succession which provides as follows: -
- “Where a person dies after the commencement of this Act, and so far as succession to his property is governed by the provisions of this Act, then on the application by or on behalf of a dependant, the court may, if it is of the opinion that the disposition of the deceased's estate effected by his will, or by gift in contemplation of death, or the law relating to intestacy, or the combination of the will, gift and law, is not such as to make reasonable provision for that dependant, order that such reasonable provision as the court thinks fit shall be made for that dependant out of the deceased's net estate.”
25. Under Sections 39 and 66 of the law of succession Act, only a surviving spouse is recognized and not former wives. However, a former wife can claim a share out of the estate pursuant to section 7 of the Matrimonial Property Act especially where the property in question was acquired during the subsistence of the marriage. The Objector has stated that when she met the deceased he was a poor man and everything that was left by the deceased was acquired by herself and the deceased jointly. This is not an issue that this court can determine, it is a reserve of the Matrimonial Property Court.
26. However, this court can be guided by provisions of section 28 of the Law of Succession Act which gives guidelines that the court is to consider in making provision for a dependant. The court considers the nature and amount of the deceased's property, any past, present or future capital or income from any source of the dependant, the existing and future means and needs of the dependant, whether the deceased had made any advancement or other gift to the dependant during his lifetime, and the conduct of the dependant in relation to the deceased. The Objector has not provided any documents to support her case that she contributed to the acquisition of the Deceased's property.
27. The Objector is however entitled to the matrimonial property where she lived with the Deceased and her children before she relocated to the United States. That is property Ruiru East Block 1/5708. The Objector's children are well provided for in the estate distribution. The Objector received vehicles from the estate and cash at hand from the 1st Administrator. Being a dependant of the deceased, she has already been adequately provided for and therefore shall only be entitled to her matrimonial home.
28. Parties shall bear own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7TH DAY OF FEBRUARY 2023.

E.K. OGOLA



JUDGE

Judgment delivered online the presence of:

M/s Mukuhi for Mr. Njanja for the 1st Administrator

Mr. Ngugi for 2nd Administrator

Mr. Ngugi for the Objector

Ms. Gisiele Court Assistant

