



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 2092 OF 2009
IN THE MATTER OF THE ESTATE OF GEORGE MUSEMBI MAVEKE(DECEASED)

JULIAN MBITHE MUSEMBI..... APPLICANT

VERSUS

ENOCK KULI MUSEMBI.....1ST RESPONDENT

VIOLET MWENDE MUSEMBI.2ND RESPONDENT

RULING

1. The deceased George Musembi Maveke died intestate at the Nairobi Hospital on 27th March 2006. He left a widow Julian Mbithe Musembi with whom he had four children: Laura Mbete Musembi, Nthenya Musembi, Ndinda Musembi and Maveke Musembi. He had a previous marriage with Anne Nzilani Musembi before they divorced in 1991. Their children are Enock Kuli Musembi, Michael Mwatu Musembi, Catherine Mutheu and Violet Mwendu Musembi.

2. A grant of letters of administration intestate was on 1st March 2010 issued to Nick Mwoki Kitevu (the lawful attorney of Julian Mbithe Musembi) and Isaac Edward Mithuka (the lawful attorney of Enock Kuli Musembi). Julian Mbithe Musembi lives in the United States of America. So does Laura Mbete Musembi, Nthenya Musembi, Ndinda Musembi and Maveke Musembi.

3. Enock Kuli Musembi died on 27th December 2019, and therefore Julian Mbithe Musembi (through her attorney) is the only administratrix

4. The estate of the deceased comprises:-

- a) Kyuna Estate L.R. 209/7936 that has a tenant;
- b) Ngong/Ngong/15442;
- c) KJD/Ngong/Ngong/15812;
- d) Matungulu/Sengani/439;
- e) Machakos/Mamba/323;
- f) Machakos Matuu 4511;
- g) Money at Stanbic Bank (K) Ltd, Kenyatta Avenue Branch A/C No. xxx/xx/xxxxx/xx;
- h) Money at Postbank Savings Account KAAC-xxxxxx-x; and

i) deceased's pension at Eco-Bank Account No. xxxxxxxxxxxxxxxx.

5. The liabilities were paid, except for those attached to the Kyuna Estate house and the maintenance of the other properties.

6. The present application was dated 10th June 2019 and sought the confirmation of the grant. In the proposed distribution, Julian Mbithe Musembi sought that she gets life interest on all the fixed assets. Then gets the pension and the money at bank and post bank alone. She was going to pay the liabilities. Her children supported her proposal. In the written submissions by her counsel, she asked that, upon her death, the fixed assets would go to all the children of the deceased in equal shares.

7. Before Enock Kuli Musembi died, he swore and filed an affidavit of protest dated 15th October 2019. His proposal was that all the fixed assets of the deceased be valued, sold and the proceeds shared between Julian Mbithe Musembi and her children, on one side, and the children of Anne Nzilani Musembi, on the other side. The same was to happen to the monies. Violet Mwendu Musembi filed her protest on 24th October 2019. Her proposal was that all the fixed assets be sold and the proceeds shared equally among all the children of the deceased, and that the rent from the Kyuna property and the money in the bank and Postbank be applied to pay off liabilities.

8. Mr. Oyoo for Julian Mbithe Musembi and her children and M/s Musa for the late Enock Kuli Musembi and her siblings each filed written submissions which I have read. Basically, Mr. Oyoo's position was that the estate be shared in accordance with **section 35** of the **Laws of Succession Act (Cap. 160)** so that Julian Mbithe Musembi is granted a life interest on all the fixed assets and, upon her death, they devolve to all the children equally. Their case was that the deceased left only one house and 8 children. The position of M/s Musa was that the estate be distributed under **section 40(1)** of the **Act** because the deceased left two houses so that, the estate should be shared between the two houses according to the number of children in each house.

9. I appreciate what each counsel had to say. I note, however, that the deceased divorced Anne Nzilani Musembi in 1991. The result was that when he died on 27th March 2006 he left one widow and, in all, eight (8) children. He did not leave two houses. It is, nevertheless, considered that Julian Mbithe Musembi has her four children, and then there are her four step children.

10. The other consideration is that Julian Mbithe Musembi and her family live in the United States of America, and the other family lives in Kenya. As I bear in mind the provisions of **section 35(2)** of the **Act** (which provides that Julian Mbithe Musembi gets the personal household effects of the deceased and gets life interest on the whole residue of the net intestate estate of the deceased), it is also true that each child of the deceased is entitled to equal benefit from the estate of his/her late father. This is the spirit of **sections 35, 38 and 40** of the **Act**. For a family that is in disharmony, the appropriate thing would be to immediately share out the estate to each one of them so that his/her life can benefit untethered.

11. That being the case, I order as follows:-

(a) Julian Mbithe Musembi shall absolutely get the pension of the deceased in Eco-Bank A/C No. xxxxxxxxxxxxxxxx (previously E.A. Building Society A/C No. xxxxxxxxxxxxxxxx), the money at Stanbic Bank K. Ltd Kenyatta Avenue A/C No. xxx/00/xxxxxx/01 and the money at Post Bank Savings A/C No. KAAC-xxxxxx-6;

(b) Kyuna Estate LR No. 209/7936 shall be valued and sold, and the proceeds shared equally among Julian Mbithe Musembi, Estate of Enock Kuli Musembi, Michael Mwatu Musembi, Laura Mbete Musembi, Nthenya Musembi, Ndinda Musembi, Maveke Musembi, Violet Mwendu Musembi and Catherine Mutheu, after the payment of the estate liabilities;

(c) Ngong/Ngong/15442, KJD/Ngong/Ngong/1582, Matungulu/ Sengani/439, Machakos/Mamba/323 and Machakos/Matuu/ 4511 shall each be equally shared among the beneficiaries of the deceased named in (b); and

(d) any other property of the deceased not named in (a), (b) and (c), or later discovered, shall be shared equally among the nine (9) beneficiaries.

12. Now that Enock Kuli Musembi died, I direct that the grant to him is revoked and that the administrators of the estate of the deceased shall be Nick Muoki Kitevu (the lawful attorney of Julian Mbithe Musembi) and Violet Mwendu Musembi.

13. The grant shall be confirmed in the above terms.

14. 28 days to appeal to Court of Appeal.

DATED and DELIVERED at NAIROBI this 7TH day of FEBRUARY 2022

A.O. MUCHELULE

JUDGE