



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**Coram: D. K. Kemei - J**

**SUCCESSION CAUSE NO. 634 OF 2013**

**IN THE MATTER OF THE ESTATE OF ALBERT MUSYOKA MUETI (DECEASED)**

**CHRISTINE NZILANI MUSYIMI.....APPLICANT**

**AND**

**MUETI KALA MUMBE**

**DORCAS KANINI MUETI..... RESPONDENTS**

**RULING**

1. This ruling relates to the application dated 21.5.2020 for confirmation of grant.
2. This matter relates to the estate of **Albert Musyoka Mueti** the deceased who died intestate on 7.3.2013. The applicant applied for Letters of Administration intestate in the estate of the deceased. A grant was issued on 30.7.2014.
3. In her application for confirmation of grant the applicant proposed the mode of distribution as follows as gleaned from the pleadings on record:

<b>PROPERTIES</b>		<b>SHARES</b>
<b>Death Gratuity of Kshs 2,000,000/-</b>	Christine Nzilani	Kshs 1,800,000/-
	Muteti Kala Mumba	Kshs 100,000/-
	Dorcas Kanini Muteti	Kshs 100,000/-
<b>Compensation for death</b>	To be deposited in a Trust account for an behalf of Neville Mutinda Musyoka	Kshs 1,114,240

4. The respondents did not oppose the distribution as they did not file response to the summons for confirmation of grant. However, the Respondents have been named as dependants of the deceased even though they did not consent to the distribution. Their being made dependants is in pursuance of this court's ruling dated 19.5.2020 wherein the petitioner was directed to make reasonable provisions to the respondents during the confirmation of the grant. There is an affidavit of service on record indicative that the advocates on record for the respondents were served with the hearing notice for the instant application. Therefore, I am satisfied that they were aware of the proceedings but they elected not to respond.

5. I have considered all the evidence adduced. There are two issues which arise for determination:

- Who are the beneficiaries entitled to the estate of the

deceased"

- How should the estate be distributed"

6. **Who are the beneficiaries**”? The deceased was survived by one child, his wife and his two parents. **Section 29** of the **Law of Succession Act** provides:

*“For the purposes of this Part, “dependant” means –*

*(a) 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;*

*(b) Such of the deceased’s parents, step-parents, grandparents, grandchildren, step children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death;*

Thus, the parents of the deceased are dependants if they were maintained by the deceased prior to his death. This court has already made a determination that the parents of the deceased are his dependants. The child of the deceased is also his dependant and so is his wife.

7. In relation to the respondents, section 26 governs provisions for dependants not adequately provided for by will or on intestacy. **It states that**

*“ 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.”*

8. This brings me to the last consideration which is the **distribution of the Estate**. I have looked at the mode of distribution of the estate of the deceased. The question then would be, is the 100,000/- out of the estate of the deceased reasonable provision for each of the respondents?

9. I am of the view that on a balance of probabilities, the amount proposed by the applicant is reasonable as there is no opposition to the same by the respondents. In the case of **Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 others [2018] eKLR**, the Learned Justices of the Supreme court stated that;

*“ [9] A Replying Affidavit is the principal document wherein a respondent’s reply is set and the basis of any submissions and/or List of Authorities that may be subsequently filed. Absence this foundational pleading, the Replying Affidavit, it follows that even the Written Submissions purportedly filed by the 1st Respondent on 17th August, 2018 are of no effect. Curiously, we further note that even the said Written Submissions are not dated, though this possibly might not have been fatal had the foundational document, the Replying Affidavit, been in order. From a perusal of the Written Submissions, it is clear to us that they are substantially based and relies on the undated and unsworn Replying Affidavit. Also, there are no Grounds of Objection raising any specific points of law of any preliminary or jurisdictional nature. The upshot is that as the 2nd and 3rd Respondents had categorically stated that they do not oppose the application, the Court will be excused for therefore deeming the application as being unopposed entirely.*

10. I note that the provision proposed by the applicant is that each of the respondents is to get a sum of Kshs 100,000/ from the estate. I find the said amount to be reasonable as the respondents being senior citizens have been enrolled in the Government’s transfer programme where a sum of Kshs 2,000/ is paid to the said persons. With that kind of money plus some income from their rural farming activities the respondents’ upkeep is no longer an issue. Suffice to add that the respondents opted not to file any responses to the summons for confirmation of grant thereby implying that they are satisfied by the reasonable provision made to them by the Administrator/Applicant.

11. In the result I find merit in the summons for confirmation of grant dated 21.5.2020. The same is allowed and that the estate of the deceased shall be distributed as proposed vide paragraph 6 of the applicant’s supporting affidavit sworn on 21.5.2020. I make no order as to costs.

It is so ordered.

Dated and delivered at **Machakos** this **10<sup>th</sup>** day of **February, 2021**.

**D. K. Kemei**

**Judge**