



**REPUBLIC OF KENYA**

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

**(Coram: Odunga, J)**

**SUCCESSION CAUSE NO. 596 OF 2006**

**IN THE MATTER OF THE ESTATE OF THE JAMES MUTUKU MULI (DECEASED)**

**BRIDGET NGINA JOSEPH.....OBJECTOR/APPLICANT**

**VERSUS**

**VICTORIA KATUNGE WAMBUA**

**ANGELINA KAVENI MULI..... RESPONDENTS**

**RULING**

1. By Summons dated 20<sup>th</sup> January, 2020, the Applicant herein seeks the following orders:

- 1) **THAT** this Application be certified as very urgent and be heard exparte in the first instance.
- 2) **THAT** pending the hearing and determination of this cause the honourable court be pleased to order release of at least Kenya Shillings Two Hundred and Fifty Thousand (Kshs 250,000/=) to cater for school fees and other school related expenses for the deceased's child namely GMM.
- 3) **THAT** the Honourable Court be pleased to appoint Briget Ngina Joseph and Victoria Katunge Wambua as the joint administrators of the estate.
- 4) **That** the Honourable Court be pleased to order that the deceased funds/benefits held at the ministry of wildlife be shared equally between the two wives of the deceased for the benefit of their respective houses.
- 5) **THAT** the cost of this application be provided for.

2. According to the Applicant, though the deceased had two wives, the Respondents secretly petitioned for issuance of letters of administration in her absence. It was deposed that the letters of administration that had been issued to the Respondents herein were revoked and no further action has been taken in the matter despite her pleas to the Respondents to take up the matter to conclusion.

3. It was deposed that the deceased's children from her household are in urgent need of school fees as one of them, **GMM**, is due to report to form one at [Particulars Withheld] Girls High School as she completed standard eight last year, 2019. It was her averment that she has been catering for all her educational expenses and her general welfare single handedly but she is unable to raise the required fees since the only asset left by her deceased husband are funds in excess of one million Shillings held at the Ministry of wildlife where he worked as his final dues or benefits.

4. It was the applicant's case that it is unfair for the said funds to remain uncollected due to the unwillingness of the Respondents to have this cause concluded. She disclosed her willingness to administer the estate jointly with 1<sup>st</sup> Petitioner, **Victoria Katunge Wambua**, as joint administrators. In the meantime she proposed that the funds at the ministry of wildlife be shared equally between the two of them while Kenya Shillings Two Hundred Thousand only (Kshs.250,000/=) be released to her to enable payment of the school fees and other related school expenses.

5. In her further affidavit, the applicant deposed that the Director General Kenya Wildlife Service confirmed that her deceased husband is entitled to Pension Benefits and Group Life Assurance. She disclosed that though her said child, **GMM**, joined Form 1 on 13<sup>th</sup> January 2020 without paying any school fees, she is currently in huge arrears and may be sent home for lack of school fees and other related school

expenses.

6. It was submitted on her behalf that she was married to the deceased herein in the year 1997 and had been blessed with one child, **GKM**. By a ruling delivered on 16<sup>th</sup> June, 2015 by **Mutende, J**, the court found that the deceased had recognized both the 1<sup>st</sup> Petitioner and the Objector herein by having their names included in the orphans Pension scheme and that that in itself was evidence on a balance of convenience that he recognized the Objector's child as a beneficiary of the estate. It was therefore submitted that the Objector and her child are proper beneficiaries of the estate of the deceased herein.

7. Though in their response the Respondents denied that the objector and her child are proper beneficiaries of the estate of the deceased herein, it was submitted that since the said ruling still stands and has not been set aside, the Applicant and her child are beneficiaries of the estate of the deceased and they have capacity to bring the application dated 20<sup>th</sup> January 2020 and for the ends of justice to be met.

8. It was the applicant's position that her prayer is to have the Application allowed to enable all the parties get a fair share of their entitlement and for them to be able to cater for their respective needs. According to her, the ends of justice shall be served by adopting the proposal set out by her to have an administrator appointed and the funds shared between the two households.

9. In opposing the application, the Respondents relied on a replying affidavit sworn by **Victoria Katunge**, the 1<sup>st</sup> Respondent herein who denied that she has refused or failed to take up the matter to its logical conclusion. According to her, she was unaware of the deceased's other children under the care of the Applicant as no such evidence was given. Since she was unaware of the figure mentioned by the applicant, she was unable to comment thereon.

10. The deponent maintained that the Applicant is not a beneficiary of the deceased's estate and she asserted that she was unwilling to administer the deceased's estate with a stranger. It was her position that the Grant having been revoked, she has no obligation to proceed with the administration of the estate particularly as she is financially incapacitated.

#### **Determination**

11. I have considered the instant application which is premised on section 71(3) of the **Law of Succession Act** and Rule 73 of the **Probate and Administration Rules**.

12. In her ruling dated 16<sup>th</sup> June, 2015, **Mutende, J** found that the deceased having recognised both the 1<sup>st</sup> Petitioner and the Objector by having their names included in the Orphans Pension Scheme would be evidence on a balance of convenience that he recognised the child as a beneficiary of the Estate. She further found that it was apparent that the Respondents herein were aware of the existence of the Applicant herein and her child, **GK**, at the time of petitioning for the Grant, a fact they concealed from the court.

13. Having so found, the Respondents cannot successfully dispute the beneficial interest of the said **GK** in the Estate of the deceased herein.

14. As to whether the Applicant was a wife, to the deceased, that was not determined by the Court since the Court found that no dowry had been paid in order for the existence of customary marriage to exist. Accordingly, the issue of distributing the deceased's estate to two houses cannot arise. As for the administration of the deceased's estate, the Grant having been revoked, it is upon the Applicant, if she so wishes, and if properly advised to take the necessary legal steps as provided for in law.

15. In the premises, I hereby direct that the sum of Kshs 150,000.00 be released by Kenya Wildlife Service being part of the deceased's Pension Benefits and Group Life Assurance, directly to [Particulars Withheld] Girls' High School being fees for the said **GMM** while the sum of Kshs 50,000.00 be released to the Applicant herein being the expenses for the said **GMM**. The fact of the release of the said sum shall be taken into account when it comes to the distribution of the deceased's estate.

16. It is so ordered.

**Ruling read, signed and delivered in open Court at Machakos this 1<sup>st</sup> day of March, 2021.**

**G. V. ODUNGA**

**JUDGE**

**In the presence of:**

**Mr Muumbi for Mr Musyoka for Kimeu for the Respondent**

**Mr Kimani for Mr Nzioka for the Applicant**

**CA Geoffrey**