



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

SUCCESSION CAUSE NO. 364 OF 2015

IN THE MATTER OF THE ESTATE OF THE NEHEMIAH KIPSANG RONO (DECEASED)

LINNER CHERUIYOT.....1ST PETITIONER

PURITY CHEMUTAI.....2ND PETITIONER

VERSUS

MERCY WANGUI NJERI.....OBJECTOR

JUDGMENT

1. The deceased in this case **NEHEMIA KIPLANGAT RONO** (hereafter referred to as the deceased) died intestate on 14/10/2015.
2. On 20/11/2015, the mother of the deceased (**LINNER CHERUIYOT**) and his sister (**PURITY CHEMUTAI**) Petitioned for letters of Administration in respect of the estate of the Deceased and they stated in the Petition that the Deceased was survived by the following:-
 - (i) **REUBEN CHERUIYOT** - **FATHER**
 - (ii) **LINNER CHERUIYOT** - **MOTHER and**
 - (iii) **PURITY CHEMUTAI** - **SISTER**
3. The deceased was working as an Inspector of Police with the Kenya Police Service at the time of his death and the only asset he left was his pension and savings at the Police Sacco.
4. On 5/10/2016, the Objector in this case **MERCY WANGUI NJERI** filed an objection to the making of the grant on the grounds that she was the sole beneficiary of the Estate having been married to the Deceased and they had two children namely **LK** (Seven Years Old) and **CC** (Three Years Old) and further that she was not consulted by the Petitioners to consent to the Petition as required by for P & A.38 and neither was she involved in the filing of the Petition which was intended to disinherit her and her children from the Estate of the Deceased who was her husband.
5. The hearing of the case proceeded by viva voce evidence. The objector testified that she was the wife of the deceased having stayed with him from 2008 until 2015 when the deceased died.
6. The objector said they met in 2007 and moved in together in 2008 and they were blessed with two children LK and CC. She produced birth certificates which bore the deceased's name as the father of the two children.
7. The objector said they built a house at Kibugat Village in Kericho County with the deceased but the Petitioners who are the Mother and Sister of the deceased chased her away upon the untimely death of her husband.
8. The Objector said she attended the funeral and again she was told to go away by the Petitioners after the funeral.
9. The Objector said the deceased used to pay N.H.I.F. Contributions for the children and that she is the only one entitled to the Estate with her children as wife and children to the deceased.
10. The Court directed that the two children be subjected to DNA to determine their paternity. The DNA Report was filed in Court dated

14/10/2020 which stated that the deceased was the biological father of the two children.

11. The 1st Petitioner stated in her evidence that the deceased who was her 4th born son was not married and that she does not know the Objector and her children and she has never seen them prior to this case.

12. The Petitioners called one witness **STANLEY CHEPKWONYCHERUIYOT** who said the deceased was his brother's son. He also said the deceased was not married at the time of his death and that he was buried as an unmarried person.

13. The issues for determination in this case are as follows:-

(i) Whether the deceased was married to the Objector at the time of his death.

(ii) Whether the Objector and her two children are entitled to the Estate of the deceased.

(iii) Who should administer the Estate of the Deceased?

14. On the issue as to whether the deceased was married to the Objector at the time of his death, the law requires that he who alleges a fact must prove it. The Objector said she moved in with the deceased in 2008 and they started living as husband and wife and they have two children.

15. The 1st Petitioner and her witness said they have never seen the Objector and her children and that the deceased was not married at the time of his death.

16. I find that the objector did not call any witnesses to testify that the deceased held her out as his wife for purposes of raising a presumption of marriage.

17. The Objector did not establish that there was a marriage between her and the deceased – either under statute, customary or otherwise.

18. I therefore find that there is no evidence that the deceased was married to the Objector at the time of his death. The Objector is not entitled to inherit the Estate of the Deceased.

19. On the issue as to whether the Objector and her children are entitled to the Estate. The Court having made a finding that the Objector has not proved that she was the wife of the deceased, it follows that she is not entitled to inherit the Estate.

20. However, concerning the two Minors LK and CC, the D.N.A. Reports states that they were sired by the deceased and they are therefore dependants of the deceased under Section 26 of the Law of Succession Act.

21. The Law states that the children of the deceased are entitled to inherit the Estate whether or not they were being supported by the deceased at the time of his demise. In the current case, there is evidence that the deceased was taking care of the two children before his demise.

22. I accordingly find that the two children **LK** and **CC** are entitled to inherit the Estate of the deceased as sole beneficiaries, as provided by section 38 of the Law of Succession Act which states as follows ***“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.”***

23. On the issue as to who should administer the Estate of the deceased, I find that the two Petitioners are entitled to administer the Estate.

24. The 1st Petitioner said the deceased had nominated her as the next of kin at his place of work and this evidence was not controverted by the Objector.

25. Since the two beneficiaries are minors, the two Petitioners to be issued with Letters of Administration and to hold the Estate in trust for the two Minors in equal shares as provided for under section 41 of the Law of Succession Act which provides as follows ***“Where reference is made in this Act to the “net intestate estate”, or the residue thereof, devolving upon a child or children, the property comprised therein shall be held in trust, in equal shares in the case of more than one child, for all or any of the children of the intestate who attain the age of eighteen years or who, being female, marry under that age, and for all or any of the issue of any child of the intestate who predecease him and who attain that age or so marry, in which case the issue shall take through degrees, in equal shares, the share which their parent would have taken had he not predeceased the intestate.”***

26. This being a family dispute, each party to bear its own costs of the suit.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 11TH DAY OF JUNE, 2021.

A. N. ONGERI

JUDGE