



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 661 OF 2015**

**IN THE MATTER OF THE ESTATE OF IMOLILUHATSE PAUL (DECEASED)**

**RULING**

1. I am determining a preliminary objection, dated 18<sup>th</sup> February 2021, raised with respect to a summons for revocation of grant, dated 26<sup>th</sup> February 2020, filed by a granddaughter of the deceased. The argument is that a granddaughter of a deceased person lacks *locus standi* to bring a summons for revocation of grant.

2. I held in *In re Estate of Veronica Njoki Wakagoto (Deceased)* [2013] eKLR (Musyoka J), that a grandchild of the deceased was not entitled directly to the estate of their late grandfather in intestacy, so long as their own parents, being children of the deceased, were alive and were taking their rightful share. The argument was that such a grandchild would take indirectly through her own parents. I went on to state that a grandchild would be entitled to inherit directly from the intestate of their grandparent where his or her own parent, the child of the deceased, was dead, and, therefore, not available to take their share directly. In such case, the grandchild would be entitled to take directly by virtue of section 41 of the Law of Succession Act, Cap 160, Laws of Kenya. In *In re Estate of Florence Mukami Kinyua (Deceased)* [2018] eKLR (T. Matheka J), the court pronounced a grandchild to be a direct heir to the intestate estate of their grandparent, where his or her own parents have predeceased the grandparent, or, should I add, the parent dies before the estate is distributed. The court asserted that such a grandchild steps into the shoes of the deceased parent so as to take the share that such parent would have taken from the estate of the grandparent's estate. See also *Cleopa Amutala Namayi vs. Judith Were* [2015] eKLR (Mrima J).

3. In the instant case, the applicant, in the summons for revocation of grant, is a child of a dead son of the deceased herein. The applicant is claiming directly by dint of *In re Estate of Veronica Njoki Wakagoto (Deceased)* [2013] eKLR (Musyoka J) and *In re Estate of Florence Mukami Kinyua (Deceased)* [2018] eKLR (T. Matheka J), and does not require to take out letters of administration to intervene in the estate of her late grandfather, where her own parents are dead. Secondly, apart from case law, the provisions of the Law of Succession Act cover these situations. Section 39 of the Law of Succession Act makes grandchildren heirs in intestacy, where their own parents, who are biological children of the deceased, are dead. Section 41 of the Law of Succession Act is the provision that enables grandchildren to step into the shoes, of their own parents, and to step into those shoes they need not take out letters of administration.

4. I believe that there is a misconception. Grandchildren are not in the same footing with the daughters-in-law or children-in-law of the deceased. Grandchildren would be blood relatives of the deceased. They would be entitled automatically, as blood kin of their grandparent, to take the share due to their own parents, the biological children of the deceased, where such biological children are dead. A surviving spouse of a dead child of the deceased is not a biological kin of the deceased parent-in-law. Such a child-in-law would have no automatic right or entitlement to a share in the estate of her parent-in-law. Whereas statute is clear that grandchildren have a right under sections 39 and 41 of the Law of Succession Act, there is not a single provision in the Law of Succession Act, or any other statute for that matter, which makes provision for any in-law. Consequently, since in-laws have no rights of inheritance from the estates of their in-laws, they can only approach the court upon obtaining representation to the estates of the persons on whose account they claim. Their claim to a stake in the estate of the parent-in-law would not be in their own right, but rather on behalf of the estate of another, their dead spouse. They can only stake a direct claim to the estate of their late spouse, whose assets include what the dead spouse inherits from the estate of their parents. I must emphasize that grandchildren are not in that boat with such in-laws, and they claim from their grandparent's estate, not on behalf of their dead parents, but directly as grandchildren, children of such dead children, the share that ought to have gone to their parents.

5. From what I have stated above, it should be clear enough that there is no merit whatsoever in the preliminary objection, dated 18<sup>th</sup> February 2021, and I hereby disallow the same. There shall be no order on costs.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 10<sup>TH</sup> DAY OF DECEMBER, 2021**

**W MUSYOKA**

**JUDGE**