



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO. 1193 OF 2013

RE ESTATE OF BENSON KAHIRO NJOROGE (DECEASED)

PETER NJOROGE KAHIRO.....PETITIONER

VERSUS

LUCY WANGARI MAINA.....PROTESTOR

RULING

1. The sole issue is whether the Public Trustee should be compelled to release the funds which are due to the estate *solely* to the protestor; or, into a *joint account* of the two administrators.

2. By a judgment delivered on 24th March 2017, the court (*Waweru J*) ordered:

I direct that the net estate of the deceased (which appears to consist only of some money) shall go absolutely to the 2nd administrator, Lucy Wangari Maina so that she is able to take care of herself and her child, Favour Ajendia Wambui Kahiro.
[Underlining added]

3. The deceased was a police officer. His gratuity of about Kshs 602,640 was released to the Public Trustee on 31st March 2014. The Public Trustee insists that the funds can only be transmitted into the joint account of the petitioner and protestor.

4. The protestor will hear none of it. She has presented a summons dated 8th June 2018 to compel the Public Trustee to comply with the judgment and release the sums exclusively to her.

5. The Public Trustee demurs. His argument is that there is a continuing trust in favour of the child; and, that the funds must be administered by both administrators.

6. The parties filed submissions. Those by the protestor are dated 11th September 2020; those by the petitioner were filed on 21st September 2020.

7. On 24th September 2020, learned counsel for both parties informed the court that they were relying wholly on their written submissions.

8. The applicant's summons fails for five reasons. Firstly, it is true that the court ordered that the net estate of the deceased shall go *absolutely* to the 2nd administrator, Lucy Wangari Maina. However, the grant was confirmed *jointly* in the names of the administrator and the protestor. Doubt is removed completely by the certificate of confirmation of grant dated 29th March 2017. So much so that although the funds were to go *wholly* to the protestor, it did *not* make her the *sole* administrator.

9. Secondly, there is a minor child of the deceased born on 18th November 2008. Under the **Law of Succession Act**, the grant could not be made to a sole applicant.

10. Thirdly, the judgment was emphatic that the funds were to be released to the protestor "*so that she is able to take care of herself and her child, Favour Ajendia Wambui Kahiro*". From that wording, it is obvious that a *continuing trust* arose as contemplated under section 41 as read with section 71 (2) of the **Law of Succession Act**.

11. Fourthly, it is material that the Public Trustee is *not* the administrator of the estate. The confirmed joint administrators, in whose names the property of the deceased vests, remain the petitioner and protestor irrespective of any bad blood between them. The Public Trustee cannot release the funds to one of them particularly in view of the continuing trust.

12. Fifthly, when those funds get into the hands of the two, they must comply with the *schedule* in the confirmed grant and release the sums *wholly* to the protestor. I can clearly see the misgivings by the protestor because she did not want to share the funds with the petitioner, the father of the deceased. And no one is asking her to do so now in view of the express wording of the judgment.

13. For all those reasons, the protestor's summons dated 8th June 2018 is without merit and is *disallowed*. There shall be *no* order on costs.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 6th day of October 2020.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of:

Mr. Mwangi for the protestor/applicant instructed by Kirubi, Mwangi Ben & Co. Advocates.

No appearance by counsel for the Public Trustee.

Ms. Dorcas Waichuhi & Ms. Susan Waiganjo, Court Assistants.