



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 156 OF 2012

IN THE MATTER OF THE ESTATE OF WKPL (DECEASED)

CFL.....1ST PETITIONER

RL.....2ND PETITIONER

JCBL.....3RD PETITIONER

VERSUS

LJHS.....OBJECTOR/APPLICANT

J U D G M E N T

1. **WKPL** (*the deceased*) died on 15/11/2001. According to the letter of introduction from the Area Chief of [particulars withheld] Location, the deceased left behind **CFL (father)**, **RL (sister)**, **JCBL (sister)** and **JHL (son)** as his survivors.

2. On 20/3/2012, **CFL, RL and JL** (*the petitioners*) petitioned for letters of administration listing **Meru Municipality Block [xxxx]**, **Meru Municipality Block [xxxx]** and **Motor vehicle registration No. [xxxx] Toyota Corolla** as the deceased's assets.

3. The grant was issued to the petitioners on 25/5/2012 and confirmed on 5/4/2013 whereby the estate was distributed as follows: -

a) PLOT No. MERU MUNICIPALITY BLOCK [xxxx]

RL & JCBL

- Equally

b) PLOT No. MERU MUNICIPALITY BLOCK [xxxx]

CFPL & HL (minor) –

Equally (CFPL as trustee)

c) MOTOR VEHICLE REG. NO. [xxxx]

JCBL

4. On 10/1/2019, the objector applied for the revocation of the grant, inhibition on the assets of the estates and that the rent collected from the asset properties be deposited in court. He also sought that the petitioners do pay school fees for him in the sum of Kshs. 89,320/=.

5. The application was opposed vide the affidavit of **CFL** sworn on 21/2/2019.

6. The application was determined by way of *viva voce* evidence. The parties and their witnesses adopted their respective affidavits and witness statements on which they were cross-examined.

7. **Pw1 HSL** testified that the petitioners had neither disclosed his existence as a son of the deceased nor informed him of the existence of the Cause. They had distributed the estate amongst themselves and left him a destitute.
8. He told the Court that he was 20 years at the time he was testifying but was only 12 years at the time of the demise of the deceased. They were residing **on Meru Municipality Block No. [xxxx] (Plot No. [xxxx])** as at the time his father, the deceased, died. He admitted that his grandfather, **CFL (“the 1st petitioner”)**, took care of him after the demise of his father.
9. However, he left the 1st petitioner’s home on 7/11/2018 after he asked to be considered as a beneficiary in **Plot No. [xxxx]**. The 1st petitioner disowned him and chased him away from his residence. He would later reside at St Joseph’s Cathedral Meru, at her maternal grandmother’s place in Kianjai and then with a colleague, one M in Nairobi.
10. **Rw1 CFL** testified that when the petitioners petitioned for the grant, the objector was aged 11 years. He had been sufficiently provided for in the distribution of the deceased’s estate. That **Plot No. [xxxx]** belonged to his wife **LPL** and upon her demise, the family agreed that the deceased should hold the properties on behalf of and in trust for the family.
11. For this reason, **Plot No. [xxxx]** was divided equally between the 2nd and 3rd petitioner while **Plot No. [xxxx]** was divided equally between him and the objector. The motor vehicle was sold and some of the money was used to support the applicant through school.
12. He further testified that he had throughout taken care of the objector. He denied chasing away the objector insisting that the objector had disappeared from his residence because he did not want to go back to school. He had incurred heavy expenses recovering **Plot No. [xxxx]**.
13. **Rw2 JCB** testified that apart from taking care and educating the applicant, the petitioners had spent in excess of Kshs. 3,814,953/48 to recover **Plot No. [xxxx]** in **Civil Suit No. 336 of 2014**.
14. She stated that the motor vehicle was sold at Kshs. 650,000/= and the proceeds therefrom used to cater for the deceased’s medical, legal and funeral expenses including costs in **Civil Case No. 336 of 2014**.
15. The parties filed their respective submissions which the Court has considered. The objector submitted that the petitioners were not direct and rightful beneficiaries of the estate in terms of **section 29 of the Law of Succession Act (“the Act”)**. That the estate ought to be distributed in line with **section 38 of the Law of Succession Act**.
16. It was further submitted that the petitioners got an upper hand in **Plot No. [xxxx]** as opposed to the objector’s share in **Plot No. [xxxx]**. That the estate of the deceased was distributed unequally hence the grant ought to be amended and/or revoked.
17. The issue for determination is whether the application meets the threshold for the revocation of a grant in terms of **Section 76 of the Act**.
18. **Section 51(2) of the Act** provides for the information that is required to be disclosed in an application for grant of letters of administration. The same provides: -
- “(g) In cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers, sisters of the deceased and of the children of any child of his or hers then deceased.”**
19. In this case and as outlined from the introduction letter of the chief and the petition for the letters of administration, the objector was disclosed as a son of the deceased as well as a beneficiary. His allegation that there was concealment of this fact is therefore without basis. It is not possible for him to have been involved or consulted at age 12. His interests were to be taken care of by having all the more than 1 petitioner applying 3 petitioners apply for the grant. This was achieved as 3 petitioners applied for the grant jointly.
20. The main issue in dispute revolves around the distribution of the estate. The deceased died leaving behind the objector as the only child. At the time of his demise, he had separated from his spouse.
21. The petitioner’s claim is that the deceased was registered as owner of the subject assets but in trust for the greater family of the 1st petitioner. On the other hand, it was the objector’s contention that since the properties were registered in the name of his father, the entire estate should have been distributed to him.
22. The Court saw the witness testify and has considered the evidence on record. It is clear that **Plot No. [xxxx]** was a leasehold issued to **LPL**, the wife to the 1st petitioner, on 18/02/1991 by the then Municipal Council of Meru. It was the evidence of the 1st petitioner which was neither denied nor challenged that, he and his wife developed the said property in 1995. That since she died in 1998. That his late wife did not want the property to go out of the family she directed that the same be for the family.
23. Looking at the copy of the green card produced in the valuation report dated 27/08/2019, it is clear that entry no. 4 thereof shows that the property was transferred to the deceased for Kshs.100,000/- on 16/4/1998.
24. The 1st petitioner testified that, ever since he developed the said property as aforesaid, he has been collecting rent therefrom to date. He developed the property when the deceased was in class five. He continued to run a hotel business in the same premises. All this evidence was neither denied nor challenged.
25. The irresistible conclusion is that if the said property solely belonged to the deceased, the 1st petitioner would not have been collecting

rent therefrom after the same was transferred to the deceased in 1998. It is more likely than not that the deceased knew it to belong to the family.

26. In this regard, this Court is satisfied that from the evidence on record, the petitioners were either dependent on the said property or the property had been registered in the deceased's name for the benefit of the entire family of the 1st petitioner. It was a trust property.

27. In persuasive decision by **Musyoka J.** in the case of **Estate of Veronica Njoki Wakagoto (deceased) (2013) eKLR** it was stated:

“.....grandchildren can only inherit their grandparents indirectly through their own parents, the children of the deceased. The children inherit first and thereafter the grandchildren inherit from the parents. The only time grandchildren inherit directly from their grand parents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.”

28. As regards **Plot No.[xxxx]**, the same was registered in the deceased's name on 25/11/2005. He sold it to one **COW** leading to a protracted dispute in **Meru Civil Suit No. 336 of 2014 CFL & Others (Suing as the Legal Representatives of the estate of WKPL) v. COW**. Through that suit, the petitioners were able to recover that property and return it back to the estate.

29. The petitioners made a considerable effort in protecting this property. There was evidence that they had to pay in excess of Kshs. 3,899,777/= to be able to secure the.

30. From the evidence on record, it is clear that the said property belonged to the deceased and was not a trust property. To the extent that the petitioners treated the same otherwise than as the deceased's personal property, they were wrong.

31. The issue of trust is the central determinant in relation to Meru Municipality Plot No. [xxxx]. That property having been trust property for the family of the 1st petitioner, it was available for his entire family. Borrowing from **VW (supra)**, the objector ought to step in the shoes of his father in relation to the share in Plot No. [xxxx]. This has to be taken into account in relation to the other dependant's i.e the petitioners.

32. In relation to **the motor vehicle**, it obviously belonged to the deceased and was not trust property as contended by the petitioners. It was however, sold by one of the petitioners. She explained that it was for the sole purpose of settling debts including medical, legal and funeral expenses for the deceased.

33. Although there were no liabilities that were disclosed in the petition, there is evidence that the deceased died at Woodlands Hospital. A **Civil Case No. 336 of 2014** was lodged reclaim the estate property. Obviously, there would be legal costs. In this regard, this Court is satisfied that the proceeds from the sale of the motor vehicle were applied for proper cause beneficial to the estate.

34. For the reason that the petitioners treated **Plot No. Block [xxxx]** as trust property, the distribution cannot stand. It must be aligned to the findings made herein.

35. The next question is how the estate should be distributed. This Court has found that **Plot No. Block [xxxx]** was trust property. It is distributable to the family of the 1st petitioner. These include the 1st petitioner (who proved that he has been dependent of that property since 1995 to-date), his co-petitioners and the objector.

36. With regards the administration of the estate there was no mistake or fraud proved against the administrators. I do not find anything untoward to disturb the administration of the estate by the petitioners save to mention that the administration shall take into account the adjustments made hereunder.

37. In view of the foregoing, I find that there is sufficient reason to disturb the distribution as follows: -

(a) **PLOT No. MERU MUNICIPALITY BLOCK [xxxx]**

- i) RL
- ii) JCBL
- iii) LJHS
- iv) CFPL - Equally

(b) **PLOT No. MERU MUNICIPALITY BLOCK [xxxx]**

LJHS

MOTOR VEHICLE REG. NO. [xxxx]

JCBL

(c) Rental proceeds from Meru Municipality Block [xxxx] shall henceforth be shared equally as hereinabove directed.

(d) This being a family dispute, I make no order as to costs.

DATED and DELIVERED at Meru this 1st day of October, 2020.

A. MABEYA

JUDGE