



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 307 OF 2003

IN THE MATTER OF THE ESTATE OF W K M' -DECEASED

SWG.....PETITIONER

VERSUS

PNK.....1ST APPLICANT

RKK.....2ND APPLICANT

JKK.....3RD APPLICANT

RULING

Grant of Letters of Administration to the estate of WKM was made to SWG on 16th December 2003, upon which 1st applicant PNK filed application dated 28th January 2004 seeking that proceedings be stayed pending hearings determination of the application and that she be made joint administrator to the estate of the deceased. She also sought that reasonable provision be made for her in the estate.

The application was supported by affidavit of 1st applicant in which she averred that the deceased supported her and her co-applicants. She said petitioner filed petition secretly and without seeking her consent or renunciation. She averred that if grant is confirmed to petitioner, her and her co-applicants will be disinherited and rendered destitute.

That application was determined by a ruling rendered by Justice Lenaola (as he then was) now Supreme court of Kenya Judge in which he said that the 1st applicant Administrator should tender evidence with or without witnesses as to their marriages, lives and properties acquired by the deceased if at all before determination under S.27 and 28 of the Law of Succession Act can be made.

Evidence was called on behalf of 1st Applicant by herself her father in law – OW2 and her brother in law – Major Retired HM. The father in law and brother in law said the 1st Applicant had always stayed on parcel No. Amwathi/Maua and Adjudication Section No.[particulars withheld] where she has a house. They gave evidence that 1st applicant and the deceased had 2 children namely RM and JK. The 1st applicant's father in law said the deceased even had a 3rd wife who died and left one daughter RK. Even the brother in law alluded to the fact that the deceased had a child known as RK with K and that the daughter was brought up by the deceased persons mother. The deceased person's brother said the deceased had more than 20 parcels of land which he acquired but he could not tell whether they were acquired before or after he started staying with petitioner.

He said he could not remember if his later brother chased away 1st applicant for having a child out of wedlock. He said the deceased had an accident and was confined to a wheel chair. He said the deceased and S stayed in N but in 1993 returned home and stayed on plot No. 119 at Maua and alter constructed house on plot No. 3896 which is adjacent to his plot. He denied that 1st Applicant was returned to her parents over claims of adultery.

The retired chief of Maua Location Charles Meeme Mauta testified that when 1st applicant complained she had been left out of the succession cause, he referred the matter to the D.O but SW the Administrator declined to attend the meeting. He said he gave a letter, identifying beneficiaries to the estate when S refused to attend meeting.

The retired chief said both 1st applicant and the Administrator were wives to the deceased. He said he was not aware the deceased separated from 1st applicant. He said PN the 1st Applicant always lived in the village to date on her husband's land.

The petitioner in her testimony said that she got married to the deceased in 1979 and found the deceased had 2 children with 1st Applicant age 10 & 3 years respectively and that they were living with their grandmother. She said that 1st Applicant had left the deceased by the time

she got married.

She said they cohabited with the deceased in Nairobi and Namanga while doing business. That they had a bar and Hotel in Namanga. They came back home when the deceased had an accident and they developed plot No. [particulars withheld] at Maua which they occupied and started running a shop. She said her husband had accident in 1992 and she contributed the most in developing the plot. She said she bought land together with the deceased. She said 1st Applicant had never bought any property jointly with the deceased.

The 2nd petitioner's witness said that when petitioner came from Nairobi 1st Applicant left. MM another brother of the deceased claimed that the deceased divorced Pauline under Meru customary law and she didn't return during his life time until on burial date when he saw her but she was restrained from entering the home for burial but one month later some elders brought her back to her home.

MM said he was 9 years old when the deceased married P the 1st Applicant and he put up a house for her on his land near the hills.

He said the case by elders to chase Pauline was done when he was 30 years. He said his father testified on 30.6.2008 and said he was not aware the deceased chased 1st Applicant and it could not be done without his knowledge and permission. The petitioner witness testified that before the deceased went to Nairobi he used to stay with 1st applicant in their house at home.

From the evidence of the 1st Applicant the evidence of the father and brother of the deceased as well as evidence of the younger brother of the deceased who was a witness to the petitioner, 1st Applicant was 1st wife to the deceased and they had 2 children. The father to the deceased and deceased persons elder brother. Retired Major HM denied that the deceased divorced the 1st Applicant under Kimeru customary law. The 1st Applicant, deceased persons father and his elder brother Retired major M as well as MM and even the petitioner in her affidavit confirm that RK was the deceased persons daughter born out of wedlock and is therefore entitled to inherit from the deceased persons estate.

Claims by the petitioner and her witness MM that 1st Applicant was divorced by the deceased under Meru Customary law has not been proved to the required standards as the elders who allegedly presided over the customary divorce proceedings were not called. The child allegedly born out of wedlock that brought about claims of adultery was not named. Most important the 89 years old father of deceased MM said the deceased didn't divorce the 1st Applicant. The deceased persons elder brother a responsible Retired Major also said the deceased didn't divorce the 1st Applicant.

I do find that evidence of MM that the deceased divorced the 1st applicant can't stand. I do find that the beneficiaries to the deceased person's intestate estate are the 1st Applicant with her 2 children, RK, the deceased persons daughter born out of wedlock and the petitioner and her children. The estate of the deceased shall be distributed as follows:-

1. LR Amwathi/Maua/[particulars withheld] will devolve to PN and her 2 children R, M and K equally.
2. LR Amwathi/Maua/[particulars withheld] and plot No. Maua/Township/[particulars withheld] will go to the petitioner herein to share equally with her children.
3. Monies held in Bank accounts in the name of the deceased to be shared equally between the 2 widows of the deceased.
4. Motor vehicles if any should devolve to the petitioner
5. The rest of the assets referred to by the applicant at paragraphs 7 and 8 of further affidavit sworn on 23rd March 2004 and assets listed in form P&A 5 and those referred to in the petitioner's submissions shall be shared equally between the applicant, applicants 2 children, petitioner, petitioner's children and the deceased persons daughter born out of wedlock known as RK

The costs of the cause shall be borne by the parties

There shall be no orders as to costs as each party will bear their own costs.

HON. A.ONG'INJO

JUDGE

RULING SIGNED, DELIVERED AND DATED THIS 14TH DAY OF FEBRUARY 2019.

In the presence of:

CA: Kinoti

Petitioner:- Ms E.g. Mwangi for petitioner N/A

Ms Wambulwa holding brief for Mr Omari for objector

Petitioner – N/A

Applicant- N/A

HON. A.ONG'INJO

JUDGE