



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 198 OF 2014

In the Matter of the Estate of Abendinego Mutembei Mitine (Deceased)

MIRIAM KANANU NYAGA.....1ST PETITIONER

CHRISTOPHER K. MUCHUNKU...2ND PPETITIONER

Versus

AGNES KAMUNDE MITINE.....OBJECTOR

JUDGMENT

[1] **ABENDINEGO MUTEMBEI MITINE** (“the deceased”) to whom this cause relates died on 17th February 2014. In the petition for letters of administration, it was stated that the deceased was survived by **Miriam Kananu** (widow), **CM** (Son) and **Agnes Kamunde** (Mother). His assets were listed to be:

- 1. Gratuity & benefits from County assembly**
- 2. Equity Bank A/C No. [xxxx]**
- 3. Meru Barclays Bank A/C No. [xxxx]**
- 4. Motor Vehicle No. KBH [xxxx]**
- 5. UAP Insurance Benefits (Life Cover)**
- 6. Britam Insurance**
- 7. Heritage Insurance Benefits**

[2] On 20th August 2014 the petitioners were issued with the grant of letters of administration intestate which was confirmed on 13th November 2014. An objection was raised by the objector which resulted into consent that Agnes Kamunde Mitine and Miriam Kananu Nyaga to be joint administrators of the estate as of 2nd March 2016. The court also directed the 1st petitioner to file an accurate account on the estate from the time she has been an administrator up to and including 29th February 2016.

[3] In administrator’s affidavit of account sworn on 1st April 2016 she stated that she received a sum of Kshs. 550,000/- from UAP Insurance Company Limited on 11th March 2015 as insurance compensation for the deceased’s motor vehicle registration No. KBH [xxxx]. She utilized Kshs. 450,000/- of the proceeds to purchase land parcel L.R. No. DONYOSABUK/KOMAROCK BLOCK 1/[xxxx]. Kshs. 80,000/- and Kshs. 20,000/- she used towards payment of house rent and legal fees respectively.

[4] In her summons for confirmation of grant dated 18th January 2018 she sought that the estate be distributed as follows:

- 1. CM - 50%**

(To be paid into a trust bank account opened in his

favour with a reputable bank in the joint names of the administrators)

2. **Agnes Kamunde Mitine** - 25%
3. **Miriam Kananu Nyaga** - 25%

[5] On the other hand, the objector in her affidavit and further affidavit sworn on 20th March and 25th July 2018 she proposed that the estate be distributed as follows:

1. **CM** - 50%
2. **Dinley Mwendwa** - 10%
3. **Miriam Kananu Nyaga** - 20%
4. **Agnes Kamunde Mitine** - 20%

The Objector was of the view that the sum of Kshs. 550,000/- received by the 1st petitioner should be deducted from her share of 20% and be shared among the other three beneficiaries. The objector in her submissions further vouched for her mode of distribution to be adopted.

ANALYSIS AND DISTRIBUTION

[6] The court's duty is to distribute the estate to the rightful beneficiaries. Invariably, it must ascertain the beneficiaries as well as the assets of the estate.

Of beneficiaries

[7] The administrators seem to be in agreement that the deceased was survived by his wife, child and mother. However, the objector added another beneficiary, that is, Dinley Mwendwa whom she stated was a daughter of the deceased. She deposed that LM is an orphan being supported by the deceased before his demise. She produced a copy of health insurance taken out by the deceased for both Dinley and CM to show Dinley had been taken in by the deceased.

[8] **WM Musyoka** in his book *Law of Succession Act* at page 126 writes that:

“An adopted child cannot therefore claim on intestacy of a natural but takes on the intestacy of the adoptive parent and other relatives by adoption, such as grandparents, brothers and sisters, and so on. Likewise, if the adopted child dies intestate, the child's adopting parents, and not the natural parents, will be capable of benefitting under the rules of intestacy – as will brothers and sisters, grandparents and so on by adoption.”

[9] In any event, evidence adduced show that the deceased had taken Dinley in as his own and took out policy of health insurance for her as well as his son. Consequently, I am of the view that the deceased treated Dinley as his child of which it has not been refuted by the 1st petitioner. Dinley is therefore a dependant for the purposes of succession as she is such of the children whom the deceased had taken into his family as his own, and as was being maintained by the deceased immediately prior to his death. Based on the foregoing, I find and hold that the beneficiaries of the deceased are *Miriam Kananu Nyaga, Agnes Kamunde Mitine, CM and Dinley Mwenda*.

O f assets

[10] It seems parties agree that the following forms part of the estate of the deceased:-

1. **Gratuity & benefits from County assembly**
2. **Equity Bank A/C No. [xxxx]**
3. **Meru Barclays Bank A/C No. [xxxx]**
4. **UAP Insurance Benefits (Life Cover)**
5. **Britam Insurance**
6. **Heritage Insurance Benefits**

[11] The only matter I should determine is the receipt of Kshs. 550,000/= by the 1st petitioner from UAP Insurance being compensation of motor vehicle registration number KBH [xxxx]. She used the said sum of money to buy a parcel of land. Such insurance compensation forms part of the estate property and I will therefore treat the 1st Petitioner as a trustee for the estate of the deceased. As such, the parcel of land so purchased becomes the estate property.

Distribution

[12] Amongst the dependants of the deceased are two children; CM who is 7 years of age and LM who is in Form Three. They both have existing as well as future need in school fees and maintenance. Given the tender age of CM who is of tender years. As a result, the children require more than the adults. Here, I am guided by **Section 28(c) of the Law of Succession Act** which stipulates that the court should take into account in making any order on distribution of the estate:

(c) the existing and future means and needs of the dependant

See section 28 (ibid) below:

“In considering whether any order should be made under this Part, and if so what order, the court shall have regard to—

- (a) the nature and amount of the deceased’s property;**
- (b) any past, present or future capital or income from any source of the defendant;**
- (c) the existing and future means and needs of the dependant;**
- (d) whether the deceased had made any advancement or other gift to the dependant during his lifetime;**
- (e) the conduct of the dependant in relation to the deceased;**
- (f) the situation and circumstances of the deceased’s other dependants and the beneficiaries under any will;**
- (g) the general circumstances of the case, including, so far as can be ascertained, the testator’s reasons for not making provision for the dependant.”**

[13] From the foregoing I direct that the estate of the deceased shall be distributed as follows:

(a) Proceeds from

- 1. Gratuity & benefits from County assembly**
- 2. Equity Bank A/C No. [xxxx]**
- 3. Meru Barclays Bank A/C No. [xxxx]**
- 4. UAP Insurance Benefits (Life Cover)**
- 5. Britam Insurance**
- 6. Heritage Insurance Benefits**

To be shared as follows; CM (40%), LM (20%), the 1st administrator (20%) and 2nd administrator (20%)

(b) Two separate individual accounts be opened in the names of CM and LM and proceeds in (a) above be put in the investment earning account with a reputable bank where the joint administrators will be signatories.

(c) L.R. No. DONYOSABUK/KOMAROCK BLOCK 1/12701 be shared amongst the joint administrators.

Dated, Signed and delivered in open court at Meru this 4th Day of March 2019.

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F. GIKONYO

JUDGE

In presence of

Miriam Kananu 1st petitioner – present

Muthoni for 1st petitioner – absent

2nd petitioner – absent

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F. GIKONYO

JUDGE