



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 2071 OF 2011
IN THE MATTER OF THE ESTATE OF PMK (DECEASED)

RNK.....APPLICANT

VERSUS

CNN.....RESPONDENT

RULING

1. The deceased PMK died intestate on 30th November, 2009. He was survived by his widow CNN (the respondent) with whom he had two children, CGM and PKM. He had previously married RNK (the applicant), and the marriage dissolved on 22nd June 1994. This marriage was blessed with two children, DAKM and BJGM. The deceased's estate comprised Kshs. 47,374,183/-, money held in the bank.

2. There was a dispute regarding the distribution of the estate to the beneficiaries. On 21st March 2014 Justice Musyoka delivered a Ruling distributing the estate. The court found that the applicant, being a former wife, was not entitled to benefit from estate. He also considered that the respondent had earlier obtained Kshs. 10,000,000/- from the estate which she had used with her children. In the final analysis, the distribution was as follows:-

- a) the respondent – Kshs. 5,264,803/-
- b) C – Kshs. 5,264,803/-
- c) P – Kshs. 5,264,803/-
- d) D – Kshs. 8,597,387/- and
- e) B – Kshs. 8,597,387/-

3. The applicant was dissatisfied with the distribution and moved to the Court of Appeal. The Court of Appeal rendered its decision on 22nd September 2017. The estate was redistributed as follows:-

- a) the respondent – Kshs. 3,110,697/-
- b) C – Kshs. 3,110,697/-
- c) P – Kshs. 3,110,697/-
- d) B– Kshs. 11,828,545.25 and
- e) D – Kshs. 11,828,545.25

4. It would not appear to be in dispute that during the pendency of the appeal, the parties, following agreement, withdrew Kshs. 32,989,183/- that was in the estate account and distributed it in accordance with the decision of Justice Musyoka. It was agreed that either party would

indemnify the other depending on the determination by the Court of Appeal. The amount in the bank had by the time of this application accrued an interest of Kshs. 3,431,041/85. The Court of Appeal held that whatever interest be shared on a *pro rata* basis based on the distribution that the Court had ordered.

5. In the application dated 9th October 2017, the applicant's case was that, following the redistribution of the Court of Appeal the respondent became obligated to refund to her Kshs. 11,742,400/52 inclusive of interest; that, despite demand, she had failed to refund. She sought the payment of the money. The interest that had accrued on the initial estate money was Kshs. 3,431,041/85, and the money was in a joint account operated by the advocates at Standard Chartered Bank, Kiambu Branch. The applicant swore that the respondent had refused to execute documents to close the account and have the money shared accordingly. She sought that the respondent be compelled to execute the documents failing which the Deputy Registrar be ordered to execute them on her behalf.

6. There was another prayer relating to the 5 acres comprised in LR No. xxx/x – KAYA Estate that the estate expects to get from **High Court Succession Cause No. 2521 of 2009 – In the matter of the Estate of DKW**. DKW was the father of the deceased. His estate is yet to be finalized to determine what the estate of the deceased herein will get. The applicant sought that the Kshs. 11,742,400/52 be ordered to be paid from the respondent's entitlement in that cause. In my view, that request is speculative. All the parties to the cause in the Estate of DKW would have to be heard before an order apportioning the same. Secondly, before the estate of DKW is distributed no one knows what each beneficiary will get from it.

7. The respondent filed a replying affidavit dated 20th November 2017. She basically did not dispute that she was supposed to refund the Kshs. 11,742,400/52 that she had received following the High Court distribution. She, however, said two things. One, there was no agreement that the amount would be with interest. The money was withdrawn from the account and therefore the issue of interest would not arise. I agree with her on this. Two, she stated that she was aggrieved by the Court of Appeal's redistribution and applied to the Court for review. She wanted that no action be taken until the application for review had been heard and determined. My determination is that, since there was no stay, the Court of Appeal decision had to be realized.

8. There is the interest of Kshs. 3,431,041/85 in account No. [xxx] at Standard Chartered Bank, Kiambu Branch, in the joint names of JMM and JMK. The interest has certainly grown since the application was filed. The Court of Appeal ordered that the interest be shared on *pro rata* basis based on the distribution.

9. In conclusion, I allow the applicant's application. The respondent shall within sixty (60) days refund Kshs. 11,742,400/52 to the applicant to be distributed between D and B as ordered by the Court of Appeal, failing which the applicant shall begin execution proceedings to recover the money from her. Secondly, within thirty (30) days from today, her advocates shall execute account closing documents at the Standard Chartered Bank, Kiambu Branch, Account No. [xxxx], to allow for the interest that there is at the time of closure to be shared as ordered by the Court of Appeal, failing which the Deputy Registrar of the Court shall sign all the necessary documents on their behalf.

10. The Respondent has refused to pay the money due to the applicant for a long time. She will pay the costs of this application.

DATED and SIGNED at NAIROBI this 3RD day of JUNE, 2019.

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI this 6TH day of JUNE, 2019.

A. ONGERI

JUDGE