



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 808 OF 2016

IN THE MATTER OF THE ESTATE OF KAMAU GITAU - DECEASED

LEAH WAMBUI KAMAU.....OBJECTOR/APPLICANT

VERSUS

NDUNGU GITAU.....PETITIONER/1ST RESPONDENT

AND

MARGARET MAGIRIMURIU.....BENEFICIARY/2ND RESPONDENT

SAMUEL GITAUMAGIRI.....BENEFICIARY/3RD RESPONDENT

ANTHONY WAINAINA KAMAU.....BENEFICIARY/4TH RESPONDENT

RULING

1. The Deceased herein KAMAU GITAU (DECEASED) died on 29th April 2015 leaving a Will dated 10.4.2015.
2. The Executor named in the said Will NDUNGU GITAU applied for grant of Probate which was issued on 26.4.2019.
3. The Objector filed her objection to the grant of probate on the grounds that the will is not valid and secondly that she is not provided for in the said Will.
4. The case proceeded by way of viva voce evidence. The protestor filed a witness statement dated 21.5.2019 which she adopted as her evidence in chief. She stated in the said statement that she got married to the deceased in 1950 and they solemnized their marriage in a church ceremony on 4th May 1980.
5. The protestor said the deceased started ailing in 2009 and he was diagnosed with prostate cancer. His condition deteriorated sharply and he could not travel on his own.
6. The Protestor stated in the written statement that in February 2015, the deceased visited Equity Bank and was not able to visit the bank and the manager served him from the car.
7. She further stated from March 2015 to 29.4.2015 when he died, he was bed ridden at his home.
8. In cross examination, she said she was taking care of the deceased who was bed-ridden and he did not tell her or ask someone to take him to an Advocate to write a Will.
9. She also said she was the only one assisting the deceased when he was sick and they did not have any secrets and he used to tell the protestor all his affairs.
10. The Protestor called a document examiner (OW2) MARTIN ESAKINA PAPA who examined the signature on the Will against the deceased's sample signatures and came to the conclusion that they did not have tallying characteristics. He said that the questioned signature and the sample signatures were not made by the same hand.

11. The Respondent called the two witnesses who are alleged to have signed the Will and they said the deceased went for them in Kandara Murang'a and came with them to Nairobi where they witnessed the deceased's Will.
12. He also called SAMUEL MWANIKI Advocate who said he wrote the first Will on 24.8.2012 and on 10.4.2015 the deceased came back and changed only one clause.
13. In Cross-Examination, the Advocate said he did not know that the deceased was suffering from Prostate cancer or that he was bed-ridden at the time he is alleged to have signed the Will dated 10th April 2019. He said the deceased gave the Protestor the residual estate in his will.
14. The parties filed written submissions which I have duly considered. I find that it is not in dispute that the Protestor is the widow of the deceased.
15. The only issue for determination is whether the Will dated, 10.4.2015 is valid.
16. The Protestor called a document examiner who examined the signatures on the Will against the Deceased's sample signatures and came up with a conclusion that the same were not made by the same hand.
17. The Protestor who is the wife of the deceased also testified and said the deceased was bed-ridden from March 2015 to 29.4.2015 when he passed away.
18. The witnesses who signed the signature together with the Advocate who wrote the Will said the deceased went to the Advocate's office to execute the will.
19. I find that the testimony of the Protestor has not been challenged. The deceased died on 29.4.2015 and I believe the Protestor's testimony that on 10.4.2015, the deceased was bed-ridden and he would not have been able to go to the Advocate's office to write the Will.
20. I also find that it is suspicious that the said Will does not cater for the Protestor who is the widow of the deceased and this goes further to reinforce her argument that the Will is not valid. There is no reason why the deceased would disinherit her.
21. I accordingly find the Will is invalid and cancel the grant of probate issued to NDUNG'U GITAU on 26.4.2019.
22. The property of the deceased will devolve in accordance with the laws governing intestate succession since the will is not valid.
23. Section 66 of the Law of Succession Act, Cap 160, Laws of Kenya provides that:

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

(a) Surviving spouse or spouses, with or without association of other beneficiaries;

(b) Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

24. I direct that Letters of Administration be issued to the Protestor LEAH WAMBUI KAMAU to administer the estate of the deceased.
25. The Protestor is the widow of the deceased and she therefore has first priority in the issuance of Letters of Administration.
26. I further direct that the protestor applies for confirmation of grant within 30 days of being issued with the Letter of Administration.
27. The Protestor LEAH WAMBUI KAMAU will collect all the rental income from C 315 and C 316 KAYOLE pending confirmation of grant.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 4TH DAY OF OCTOBER, 2019

ASENATHONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.