



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1399 OF 2009**

**IN THE MATTER OF THE ESTATE OF PETER MURIMI KAGWURA A.K.A. PETER D. MURIMI KAGWURA (DECEASED)**

**RULING**

1. **Section 35** of the **Law of succession Act** (The Act) provides that subject to the provision of **Section 40** of the Act, the surviving spouse shall have the personal and household effects of the deceased absolutely; and a life interest in the whole residue of the net intestate estate provided that interest shall determine if the widow remarries to any person.
2. The deceased herein Peter Murimi Kagwura A.K.A Peter D. Murimi died intestate and left behind two widows. A grant of representation was issued on 12<sup>th</sup> November 2013 and confirmed on the 11<sup>th</sup> of October 2016 where properties were distributed to the two homes in accordance with **Sections 35** and **40** of the **Act**.
3. Before this court is an application by one of his widows Alice Wambui Murimi dated 15<sup>th</sup> May, 2018 seeking to:
  1. To add to the assets of the estate shares held in 10 different companies that were left out at the time of distribution.
  2. And that all the shares go to her.
  3. That the assets where the applicant as a widow was to have a life interest and held in trust for her family be given to her absolutely.
4. The only reason for the application is that the shares were inadvertently left out as the administrators were not aware of them. No reason is given why she should be the absolute owner of her families' entitlement.
5. In an affidavit sworn by Charles Njuguna, Alice Wambui and Charity Njeri, it is said that a son of Alice, one Edward Kariuki Murimi had refused to cooperate.
6. First, all the beneficiaries ought to agree on distribution clearly one has refused. He did not only fail to sign where Alice was to hold in trust but he has refused to consent to Alice Wambui getting all his families entitlement absolutely. And in my view there lies the problem.
7. By law the widow is to hold a life interest in the estate and in case she remarries, the properties revert to the children and so in the case of her demise. In this case, in the event that Alice Wambui disposes off the properties or re-marries what happens to the others and especially the one who has refused to cooperate and rightly so in this instance. He has refused to give his entitlement away.
8. The court further takes cognisance that the consent, filed do not appear to be consent, to the giving away of the properties. If indeed it is then the impression is that those who signed appended signatures on separate paper separate from the other documents. Properties are on a separate page, the shares to the consent now reflect 25 different companies and are on a separate page. The page with the signature is on its own, with a different font completely; definitely not part of the entire document. Thirdly why would Alice have 25 separate shares to herself as against all other beneficiaries? What is the rationale? Have all the houses and beneficiaries agreed?
9. In view of the above background the application is declined for the reason that:
  - i) **Section 35** of the **Law of Succession Act** has been overlooked.
  - ii) One of the beneficiaries has declined to consent to give up his entitlement.
  - iii) No rationale or explanation has been given for (1) above, why Alice one beneficiary is to get 25 shares in different companies to

the exclusion of others.

iv) The consent filed on the face of it looks suspect.

**10.** Having said the above, Charity Njeri Murimu and Alice Wambui Murimu are directed to appear in court.

**DATED, SIGNED and DELIVERED at NAIROBI this 4<sup>th</sup> DAY OF October, 2018.**

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**ALI-ARONI**

**JUDGE**