



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 659 OF 2013

IN THE MATTER OF THE ESTATE OF MARGARET MUTHONI NJAGI (DECEASED)

CELESTINE MWENDA MUNENE.....APPLICANT

VERSUS

RICHARD CHOMBA NJAGI.....RESPONDENT

RULING

1. Celestine Mwenda Munene, the Applicant herein, filed an application by way of a summons dated 20th July, 2018 seeking to amend the grant to include MMN who was left out of the distribution of the estate.
2. The Applicant is one of the administrators of the estate of the deceased herein having been so appointed by a Grant of Letters of Administration Intestate issued by Musyoka J, on 19th July, 2013. The grant was confirmed on 29th January, 2014 by an order of Majanja J.
3. The Respondent herein is also an administrator of the deceased's estate but despite being served as evidenced by the Affidavits of Service on record, he failed to file any response to the present application.
4. The Applicant submitted that the application which seeks an amendment of the grant is premised on the fact that one of the beneficiaries, namely MMW, was omitted from the distribution. That M is the daughter of the late Joyce Wanjiku Muthoni who is a daughter of the deceased herein. He told the court that Joyce died when M was aged three (3) years and left her under the care of her grandmother, the deceased herein. That the deceased took care of M until her death. At the time of her death, M was aged seven (7) years.
5. The Applicant pointed out that at the time of obtaining the certificate of confirmation of grant, the court was not informed that the share granted to Richard Chomba would be held in trust for MM. Richard is the elder brother of the late Margaret Muthoni Njagi, the deceased whose estate is in issue herein.
6. I have perused the record and considered the Applicant's submissions. It is clear that the deceased herein had two children: Pauline Njeri Muthoni and Joyce Wanjiku Muthoni who is deceased and survived by the said MMW.
7. In the Petition for Letters of Administration Intestate, MM was listed as one of those who survived the deceased. At the time of filing the petition in 2013, Mercy was aged 7 years which puts her at about 12 years of age now, and was therefore a minor then.
8. The certificate of confirmation of grant dated 29th January, 2014 however only provides for three persons namely:
 - Celestine Mwenda Munene.
 - Richard Chomba Njagi.
 - Pauline Njeri Muthoni
9. Whereas Richard Chomba Njagi is a brother of the deceased and was listed as a guardian for MMin the petition, he was granted a share in the deceased's estate. There is nothing to indicate that he held the share of the estate granted to him in trust for MW, the deceased's granddaughter. It is noteworthy that under **section 38** of the **Law of Succession Act** where an intestate has left a surviving child or children and no spouse as is the case herein, the net estate devolves to the surviving child or children to be shared equally amongst them.

10. Where any of those children have died leaving children of their own, those surviving children are entitled to the share due to their deceased parent.

11. Further, where a known beneficiary or heir is left out of the confirmation of grant, the court can, upon the application of one of the parties, review its orders and amend such a grant to cater for the omitted beneficiary pursuant to the inherent powers granted to the court under **Rule 73** of the **Probate and Administration Rules**.

12. In the premise therefore, the court allows the application for amendment of grant dated 20th July, 2018 as filed and orders as follows:

(a) That the share of the deceased's estate which initially devolved to Richard Chomba Njagi shall devolve to MMW to be held in trust by Pauline Njeri Njagi and Celestine Mwenda Munene until MMW attains the age of majority.

(b) That Richard Chomba Njagi shall render accounts of the amounts received into the estate from Celestine Mwenda Munene.

SIGNED DATED and **DELIVERED** in open court this **11th** day of **December, 2018**.

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L. A. ACHODE

HIGH COURT JUDGE