



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 133 OF 2010

IN THE MATTER OF THE ESTATE OF BERNARD KARANI AYUGU, DECEASED

RULING

1. The application for determination is dated 29th October 2015. It is brought at the instance of the administrator herein, Mary Grace Ayugu, seeking confirmation of the grant made to her on 29th May 2013.

2. The survivors of the deceased have been ascertained to be the deceased widow, Mary Grace Ayugu, and the four adult children – Ruth Sheila Isigi, Edwin Karani Ayugu, Mercy Murinda Ayugu and Diana Kavere Ayugu. It also includes Alice Minayo Sebi, who was adjudged by the court to be a dependant of the deceased. The assets that make up the estate have also been ascertained, and they are Nzoia/Moi's Bridge/Block 1/652 and 1727, Nairobi/Block 82/1086, three motor vehicles, death gratuity held by the Public Trustee, pension benefits and assorted household goods. The distribution proposed is that the administrator takes all the landed assets, that is to say Nzoia/Moi's Bridge/Block 1/652 and 1727, and Nairobi/Block 82/1086, the death gratuity and the pension. The dependant is to take the motor vehicles and the assorted household goods and livestock. There is a consent to the proposed distribution signed by all excluding the dependant. There are also copies of search certificates showing that the landed assets were registered in the name of the deceased.

3. The dependant, Alice Sebi Minayo, swore an affidavit on 11th November 2015. She asserts that she was a widow of the deceased, entitled to an equal share of the estate with the administrator. She says that she was only aware of three parcels of land belonging to the deceased - Nzoia/Moi's Bridge/Block 1/652 and 1727, and Nairobi/Block 82/1086, and the pension and death gratuity. She states that she was unaware of the existence of the other assets. She proposes that Nzoia/Moi's Bridge/Block 1/652 be given to the administrator, while she takes Nzoia/Moi's Bridge/Block 1/1727. She proposes that Nairobi/Block 82/1086 be sold and the proceeds of sale shared equally between her and the administrator. She proposes that the pension and the death gratuity be shared out equally amongst all the dependants.

4. Both sides filed written submissions with respect to the said application. I have read through the same and noted the arguments made therein.

5. Although Alice Sebi Minayo asserts that she was a wife of the deceased, that issue was determined by Chitembwe J, to the effect that she was not his widow, and was laid to rest by the Court of Appeal in Kisumu CACA No. 24 of 2013 when her appeal against the decision of Chitembwe J was disallowed save for the order that had required her eviction from Nzoia/Moi's Bridge/Block 1/1727. She is therefore not a survivor of the deceased in terms of Part V of the Law of Succession Act, Cap 160, Laws of Kenya. The court recognized her as a dependant within the meaning of Part III of the Law of Succession Act, meaning that the court ought to make reasonable provision for her out of the estate. She is clearly not in the same footing with the widow and children of the deceased. Her position is lesser, and so should be her entitlement from the estate.

6. I believe that the only provision that should be made for her is the asset known as Nzoia/Moi's Bridge/Block 1/1727 where she appears to have been living with the deceased. I believe that would be adequate provision for her out of the estate. The deceased was a civil servant, and the pensions and death gratuity accrue from that engagement. Under the relevant pension law, such benefits accrue to the wife and children of the deceased. As Alice Sebi Minayo was adjudged not be a widow of the deceased she would not be entitled those benefits.

7. In the end I shall, in the circumstances, order as follows: -

- a. That the application dated 29th October 2015 be and is hereby allowed in the terms set out here below;
- b. That the estate of the deceased shall be distributed as follows –
 - i. Nzoia/Moi's Bridge/Block 1/1727 to Alice Sebi Minayo;
 - ii. Nzoia/Moi's Bridge/Block 1/652 to Mary Grace Ayugu;

- iii. Nairobi/Block 82/1086 to Mary Grace Ayugu;
 - iv. The pensions and the death gratuity to Mary Grace Ayugu and the children of the deceased; and
 - v. Any other assets to Mary Grace Ayugu;
- c. That a certificate of confirmation of grant to issue accordingly;
- d. That each party shall bear their own costs; and
- e. That any party aggrieved by the orders that I have made herein has a right to challenge the same at the Court of Appeal within twenty eight (28) days.

DATED, SIGNED and DELIVERED at KAKAMEGA this 3RD DAY OF DECEMBER, 2018

W. MUSYOKA

JUDGE