



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2905 OF 2008

IN THE MATTER OF THE ESTATE OF JANE WAMBUI MWANGI (DECEASED)

RULING

1. The cause herein relates to the estate of Jane Wambui Mwangi who died on 15th April 2007.
2. Representation to his estate was obtained in this cause on 14th April 2009 by Timothy Mwangi Kaheria, through a petition lodged herein on 16th December 2008. The deceased was expressed to have been survived by her widower, two sons, three daughters and two dependants. The alleged survivors were named as Timothy Mwangi Kaheria, John Kaheria Mwangi, Wilson Kaberia Mwangi, Nancy Nyareru Mwangi, Loise Njambi Mwangi, Hellen Kerigo Mwangi, Caroline Pauline Wambui and Wendy Wambui. She was said to have died possessed of three assets, being Nairobi Block 72/936, Nairobi Block 119/486 and motor vehicle registration mark and number KAJ 824K.
3. The application for determination dated 20th April 2010 is for confirmation of the grant. The applicant identifies the persons who survived the deceased as well as the assets she died possessed of. He states that he is entitled to the said assets during life interest.
4. To that application one of the daughters of the deceased has filed an affidavit of protest sworn on 4th June 2011. She complains that she and her sister were not consulted prior to the making of the application and generally in the management of the state. She complains further that the administrator has proposed a distribution that only favours him to the exclusion of the protestor and her siblings. She states that the administrator had been paid some money by the deceased's business partner, which he did not account to them. There is also rent collected from named premises for which he is also said not to have accounted for. He is also said not to have provided for a dependant called Carolyne Pauline Wambui.
5. The administrator has reacted to the protest affidavit by filing a supplementary affidavit sworn on 8th November 2011. He states that the protestor was acting alone, without the support of her siblings. He then proceeds to account for the property and money that came into his possession during administration. He mentions that Caroline Pauline Wambui was his grandchild, but says she is now an adult. He has exhibited copies of several documents in support of his case.
6. The deceased herein died intestate. She was survived by a spouse, children and grandchildren. That being the case, distribution of his estate is to be governed by Part V of the Law of Succession Act, Cap 160, Laws of Kenya, and in particular section 35(1)(5), which states as follows –

'(1). Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to –

(a) the personal and household effects of the deceased absolutely; and

(b) a life interest in the whole residue of the net intestate estate:

Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.

(5). Subject to the provisions of sections 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net intestate estate shall on the death, or, in the case of a widow, re-marriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.'

7. As the surviving spouse is male and still alive, section 35(5) will not apply for the time being. The estate of the deceased ought to be distributed as per section 35(1) of the Law of Succession Act. The property should devolve to the surviving spouse, Timothy Mwangi Kaheria, during life interest and thereafter to the children in equal shares. By virtue of section 41 of the Act, the share of any dead child shall devolve wholly upon any offspring of any such dead child.

8. The protestor has raised questions that the appointment of the administrator was not inclusive for she had not been consulted prior to the petition being lodged in court. The answer to that issue rests with section 66 of the Law of Succession Act which gives the surviving spouse prior right over everybody else. The administrator is the surviving spouse of the departed; he therefore has prior right to administration of the estate over the protestor.

9. She complains that she and her siblings have not been provided for. To answer that question one ought to refer to section 35 of the Act. The surviving spouse is entitled to life interest; the property should revert to the children only upon the determination of the life interest. As surviving spouse, the administrator is entitled to property during his lifetime. As he is still alive the children are not entitled to the property for now until such time that section 35(5) of the Act becomes operative.

10. The protestor complains that the administrator has not accounted for some of the assets that came into his possession during administration. I note that the administrator did address that issue in his supplementary affidavit. The protestor has so far not filed a further affidavit to deal with the account given in the supplementary affidavit. I shall take it that she is satisfied with the said account, and that the matter is now at rest.

11. There is reference to dependants in the papers filed by the parties hereto. The petition does not define how the two individuals named in therein were dependants of the deceased, yet dependency, as defined in Part III, can only arise upon an application under section 26 of the Act. No such application has been filed, and determined, and therefore there is no basis for referring to these two as dependants.

12. It would appear that the two are actually grandchildren of the deceased. It has not been made clear whose children they are, whether they are children of the surviving children of the deceased or other children of the deceased who are themselves now dead. Either way, that does not disentitle the administrator to his right to the property during life interest.

13. In the end I shall resolve the application dated 20th April 2010 in the following terms –

(a) that the grant of letters of administration intestate dated 14th April 2009 is hereby confirmed;

(b) that the estate shall devolve upon Timothy Mwangi Kaheria during life interest and thereafter to the children in equal shares;

(c) that the share of any child of the deceased now dead shall devolve upon any offspring of such child;

(d) that if the grandchildren are more than one then their parent's share shall be split equally

between them;

(e) that a certificate of confirmation of grant shall issue accordingly; and

(f) that there shall be no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 20TH DAY OF JANUARY, 2017.

W. MUSYOKA

JUDGE