



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE 3052 OF 2012
(KIAMBU LAW COURTS 280 OF 2012)
IN THE MATTER OF THE ESTATE OF J M M (DECEASED)

P W M

J W K.....PETITIONERS

VERSUS

P M K

A M M

J M M.....OBJECTORS

RULING

The deceased died on 5TH July, 2012 as shown by death certificate No. [*particulars withheld*]

PLEADINGS

The Applicant and Petitioner P W M and P M K filed summons for confirmation of grant on 23rd July, 2013. The affidavit in support listed the beneficiaries of the estate in paragraph 3, namely;

- i. P W M - Widow
- ii. C M M - Son(minor)
- iii. P M M - Daughter(minor)
- iv. P W M- Daughter(minor)

The list of assets in and the mode of distribution in paragraph 6 of the affidavit include;

- i. [*particulars withheld*]
- ii. [*particulars withheld*]
- iii. [*particulars withheld*]
- iv. [*particulars withheld*]
- v. [*particulars withheld*]
- vi. [*particulars withheld*]
- vii. [*particulars withheld*]
- viii. [*particulars withheld*]

- ix. [particulars withheld]
- x. [particulars withheld]

The beneficiaries of the estate are the widow and Petitioner and 3 young children all under 10 years of age. Attached to the written consents and to the certificate of confirmation of grant which listed 10 properties, 4 of the properties are to be held in trust for the minors and 6 properties are to be distributed absolutely to the widow of the deceased.

The Respondent filed the affidavit of protest against the summons for confirmation of grant. The respondents are the father and mother of the deceased and the brother who is also a Petitioner for the confirmation of grant application.

The protest is on the following grounds;

- i. The property should not be distributed in the manner stated therein.
- ii. Under **Section 35(1)(b) and 41 of the Law of Succession Act Cap 160**, the widow is only entitled to life interest in the whole residue of the net intestate
- iii. The children are minors
 - 1. C M M 9 years
 - 2. P M M 7 years
 - 3. P W M 4 years

And a continuing trust ought to be registered with the Petitioner as trustees for the children of the deceased.

ORAL SUBMISSIONS

The matter proceeded for hearing on 20th January, 2015, the Respondents were served with the hearing notice through the advocate Wahome Gikonyo & Co. Advocates and they failed to attend Court or give any information or circumstances for the Court to consider. The affidavit of service was filed on 14th January, 2015. On record there are three (3) hearing notices all received under protest. The matter proceeded *ex parte*.

PW1 P W M informed the Court she is the widow of the deceased J M M who was murdered on 5th July, 2012; while working as a surveyor.

She is a house wife and takes care of the three (3) children of the marriage who are minors and now school going children. The Succession Cause started in Kiambu Law Courts and she obtained letters of administration with the father in-law; J M M. On 20th May, 2013 he consented and signed the mode of distribution of the deceased's estate. Since then he intimated through the Petitioner's father that he did not want to proceed with the issue anymore.

Later; she found that the parents and brother to the deceased filed a letter of protest. She asked the Court to allow her to take care of the children of the deceased and therefore all the properties should be allocated to her. She also told the Court that there were debts she wanted to settle but had no money and had to be assisted by friends who arranged a harambee. She informed the Court that the deceased's family was assisted during the deceased's life and now she needs the deceased's property to look after the children.

The Court confirms from the record that the family of the deceased consist of widow and petitioner and 3 children who are under 10 years. The extended family there is a father, mother and a brother. The list of properties should benefit the children of the deceased as per **Section 29 of the Law of Succession Act Cap. 160** as they were dependants to the deceased and are also beneficiaries' in terms of **Section 35 & Section 66 of Law of Succession Act Cap. 160. Section 41 of the Law of Succession Act** requires that

there should be a continuing trust for children of the deceased who are minors.

Therefore in the circumstances the Court considers the fair, just and equitable distribution would be as follows;

- a. Confirmed grant be in the names of widow and Petitioner P W M and L W K as administrators of the deceased's estate family to hold in trust 50% of the properties for the three (3) children of the deceased until they attain 18 years of age. The properties are;

xi. *[particulars withheld]*

xii. *[particulars withheld]*

xiii. *[particulars withheld]*

Be held in trust for the three (3) children respectively.

The rest of the properties that comprise of the deceased's estate shall be distributed as follows;

xiv. *[particulars withheld]* to be held by all the four (4) members of the family; widow and the three (3) children as the home and residence of the family.

xv. *[particulars withheld]* – to P W M absolutely

xvi. *[particulars withheld]* – to P W M absolutely

xvii. *[particulars withheld]* – to P W M and in trust for three children of the deceased

xviii. *[particulars withheld]* – to P W M and in trust for the three children.

xix. *[particulars withheld]* - P W M and in trust for the three children.

xx. 1.7 acres out of L.R. No. *[particulars withheld]* allocated to father/mother/brother of the deceased wholly, equally and jointly.

xxi. Personal effects of the deceased – P W M.

READ AND SIGNED AT NAIROBI ON THIS 4TH DAY OF MARCH, 2015

In the presence of;

Counsel and the proposed Co-administrator.

M. MUIGAI

JUDGE

L W: I am requesting the Court to be removed as administrator as it has brought me a lot of problems. I am not at ease and I am threatened

COURT: The application be mentioned in one (1) week on 16th March, 2015 for final order as to the application.

M. MUIGAI

JUDGE