



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 583 OF 2007

IN THE MATTER OF THE ESTATE OF DOMINIC MUTHANGYA NYAMBU (DECEASED)

JULIETA MAWIA MUTHANGYA.....PETITIONER

VERSUS

ROSE NYANGERA NYAMBU

ANN MWIKALI MTHANGYA

NICHOLAS MUTUMA NYAMBU.....OBJECTORS

RULING

Before this court, is an application by Chamber Summons and supporting affidavit filed by the Petitioner on 10th February 2015 for confirmation of the grant of letters of administration of the estate of the deceased. The application sought an order to resolve the dispute regarding the distribution of the estate of the deceased. This court by its replying of 29th of October 2014 appointed the Petitioner and the 3rd Objector as joint administrators of the estate of the deceased.

The Objectors filed a replying affidavit on 13th April 2015 deponing that the deceased was survived by seven beneficiaries, they are as follows;

- a. Rose N. Nyambu- Widow
- b. Ann Mwikali – Daughter
- c. Nicholas Mutuma- Son
- d. Julieta Mawia- Widow
- e. Selina Mwendu- Daughter
- f. Annah Kiseve- Daughter
- g. Rose Syovata- Deceased's mother

The marriage between the deceased and the Petitioner was not blessed with children. The Petitioner came with her two daughters to the marriage with the deceased. The deceased left assets which include the following;

- a. LR No. Mwingi/Nzeluni/1722-0.37 Hactares
- b. LR No. Mwingi/Nzeluni/291-0.48 Hactares
- c. Proceeds from NSSF
- d. Pension
- e. Terminal benefits

The Objectors proposed that all the property and the proceeds from NSSF, Pension and terminal benefits should be shared equally between the two houses.

The Petitioner filed a further affidavit on 7th May 2015 to support her application and opposed the Objector's application.

The Petitioner filed her written submissions in court on 4th May 2015. She reiterated the evidence deponed in the affidavits supporting the application. The properties of the estate of the deceased were apportioned by the deceased's clan and the Area Chief according to the minutes of the meeting held and dated 18th November, 2006. She deponed that her two daughters Selina Mwende and Annah Kiseve were biological daughters of the deceased.

The terminal benefits are the only assets left and are not subject of distribution. The terminal benefits belong to the Petitioner being the only wife to the deceased at the time of his death. The deceased's mother is still under the care of the petitioner and her sister. She proposed to court to allocate the property as per the minutes of the meeting by the deceased's clan dated 18th November 2006.

The Objectors filed their written submissions on 27th May 2015 and deponed that none of the assets has been allocated to the heirs by agreement. As regards the distribution of the estate of the deceased it should be left for determination by this court. The Objectors proposed that the assets of the estate of the deceased be distributed equally to the both houses and the deceased's mother who is under the care of the 1st objector.

Looking at all the evidence adduced by the Petitioner and the Respondent, the court has the following issue(s) for determination;

- i. Who are the children of the deceased?
- ii. Who are the wife wives of the deceased?
- iii. What comprises of the deceased's estate for distribution?
- iv. What is the equitable mode of distribution of the deceased's estate?

The Applicant sought the matter be heard interpartes for determination of distribution of the estate of the deceased. Due to the competing views of determination of the estate and the objections, under **Section 69 and 70 Law of Succession Act Cap 160** the objection must be heard before final determination and confirmation of the grant.

Parties to obtain a hearing date for hearing interpartes from the Registry on priority basis.

READ AND SIGNED IN OPEN COURT AT NAIROBI THIS 7TH DAY OF JULY, 2015

M. MUIGAI

JUDGE

In the presence of;

Counsel for theApplicant

Counsel for the.....Respondent