



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Succession Cause 2284B of 2011**

**IN THE MATTER OF THE ESTATE OF GEORGE**

**ARAP SOY – (DECEASED)**

**RULING**

The application dated 1<sup>st</sup> October 2012 has been brought by the administrators of the estate of deceased. It seeks confirmation of the grant made on 19<sup>th</sup> March 2012 to Safia Soy and Omar Sheriff.

It is premised on **Section 71** of the Law of Succession Act and Rule 73 of the Probate and Administration Rules.

The deceased was survived by his widow, Safia Soy and two minors – Brian Kipwegon Soy and Tonny Kiptoo. He left several properties, set out in the affidavit in support of the petition for letters sworn on 20<sup>th</sup> September 2011 by the administrators as well as the affidavit sworn on 1<sup>st</sup> October 2011 by Sofia Soy in support of the confirmation application. It is proposed that the entire estate devolve absolutely upon the widow, Sofia Soy. This was also the plea of Counsel for the administrators when he argued the application on 22<sup>nd</sup> January 2012.

The deceased died on 8<sup>th</sup> September 2009, and therefore distribution of his estate is governed by the Law of Succession Act. As he died interstate, the estate falls for distribution in accordance with Part V of the Law Succession Act. Since the deceased was survived by a spouse and children the relevant provision in Part V is **Section 35** of the Law of Succession Act. **Section 35** provides as follows:-

“ (1) **Subject to the provisions of section 40,**

**Where an interstate has left a 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 interest estate:**

**Provided that, if the surviving spouse is a widow that interest shall determine upon re-marriage.**

**(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 shall on the death, or, in the case of a widow, re-marriage, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children”.**

By dint of these provisions the surviving spouse is entitled to personal and household effects of the deceased absolutely and to enjoy a life interest on the remainder. The effect of this is that the surviving spouse is not entitled absolutely to the remainder of the estate, as they should only enjoy a life interest over such property. By virtue of **Section 35(5)** of the Law of Succession Act, the ultimate destination of the remainder of the estate is to the children of the deceased. This is the reason why surviving spouse cannot take the property absolutely. The life interest is held trust by the surviving spouse for the benefit of the children.

Where the children are minors, **Section 41** of the Law of Succession Act is relevant. The property shall be held in trust for the minors until they turn eighteen.

Going by the provisions stated above, the proposal to have the assets in this estate devolve upon the widow is untenable. She only enjoys a life interest over the property, which actually devolves upon the children. She can only hold the assets in trust for the children who will ultimately share the same equally.

I will allow the application dated 1<sup>st</sup> October 2012 and the grant made on the 19<sup>th</sup> March 2012 is confirmed subject to the following order: The estate of the deceased shall devolve upon the surviving children of the deceased in equal shares, to be held in trust for them by Sofia Soy until the children turn eighteen. Sofia Soy shall be entitled to enjoy life interest over the property subject to **Section 35(1) (5)** of the Law of Succession Act.

Costs shall be in the cause.

**DATED, SIGNED and DELIVERED at NAIROBI this 7<sup>TH</sup> DAY OF MARCH, 2013.**

**W.M. MUSYOKA**  
**JUDGE**