



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Succession Cause 1030 of 2012

IN THE MATTER OF THE ESTATE OF PETER HUMPHREY KARIUKI (DECEASED)

REGINA NUNGARI KARIUKI.....APPLICANT
VERSUS

RAHAB NJERI KARIUKI

MOSES WAWERU KARIUKIRESPONDENTS

R U L I N G

Peter Humphrey Kariuki, the deceased to whose estate these proceedings relate died on 4th January 2012. On 21st May 2012, the Respondents petitioned this court to be issued with grant of probate of written Will in respect of the deceased's estate. Annexed to the petition, was the written Will of the deceased. In the Will, the deceased identified his dependants as thus:

- (i) Fredrick Wanyoike
- (ii) Rahab Njeri
- (iii) David Karingu
- (iv) Moses Waweru
- (v) Alice Gathoni
- (vi) James Gathumbi.

The above six (6) dependants are children of the deceased by his first wife Elizabeth Wangui Kariuki, who is also deceased. The deceased had other dependants:

- (i) Regina Nungari Kariuki (widow)
- (ii) Peter Gathungu
- (iii) Fidelis Thami

There is no dispute in regard to who the dependants are and therefore beneficiaries of the estate of the deceased are. In the written Will, the deceased bequeathed a property known as LR. No.114/394 Lucky

Summer to all his children excluding the widow. From the submission made by the Respondents, it was their case that the reason why the widow was excluded from benefiting from the “**Crown Jewel**” of the estate was because she had been separated from the deceased at the time of his death. On her part, the Applicant argued that there is no reason why she had been excluded from benefiting from the rental income received from the said property. This was because she has been recognized by the deceased as one his dependants. She has therefore made an application pursuant to the provisions of **Section 26** of the **Law of Succession Act** to be provided for as a dependant. The Respondents objected to this application on the ground that the Applicant had been adequately provided by the deceased in the written Will.

After evaluating the facts of this application, it was apparent that the deceased did not adequately provide for the Applicant. There is dispute in regard to whether the property which is supposed to be inherited by the Applicant actually exists. That issue will be determined during the hearing of the succession case. Meanwhile, the Applicant has established a case that she ought to be provided for pending the hearing and determination of the case. This court has jurisdiction under the provisions of **Sections 26, 27** and **28** of the **Law of Succession Act** to make reasonable provision for a dependant depending on her circumstances. In the present application, there is a property of the deceased where all other dependants except the Applicant are benefiting from the monthly rental income. There is no justifiable reason why the Applicant should be excluded. I therefore direct that the Applicant shall be provided from the monthly rent received from the above property. For the avoidance of doubt, the Applicant shall receive the rental income from the second floor of suit property. Rahab Njeri and Alice Gathoni shall receive the rental income from the third floor. This order shall take effect from 30th May 2013 until the hearing and determination of the succession cause or until further orders of the court.

DATED AT NAIROBI THIS 7th DAY OF MAY, 2013

L. KIMARU

JUDGE