



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of James Mmata Ligeakis (Deceased) (Succession Appeal
E001 of 2022) [2025] KEHC 5367 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5367 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
SUCCESSION APPEAL E001 OF 2022**

JN KAMAU, J

APRIL 30, 2025

IN THE MATTER OF THE ESTATE OF JAMES MMATA LIGEKIS (DECEASED)

BETWEEN

SYLVIA NYANAHA APPELLANT

AND

PAMELA VUGUZA MWUGUSI RESPONDENT

*(Being an appeal from the Ruling of Hon S.O Ongeru (SPM) delivered at Vibiga in Senior
Principal Magistrate's Court Succession Cause No 78 of 2019 on 27th January 2022)*

JUDGMENT

Introduction

1. In his decision of 27th January 2022, the Learned Trial Magistrate, Hon S.O Ongeru, Senior Principal Magistrate, delivered a Ruling in which he distributed the deceased's estate in favour of the Respondent as against the Appellant in the following terms:-
 1. Motor Vehicle KAM xxxX Madza shall be wholly given to the Respondent.
 2. Moi's Bridge/Ziwa Block 17 be shared equally between the Appellant and the Respondent.
 3. South Maragoli/Bugunda/2423 shall be given wholly to the Respondent.
 4. Each party to bear his or her own costs.
2. Being aggrieved by the said decision, on 17th February 2022, the Appellant filed a Memorandum of Appeal of even date. She relied on four (4) grounds of appeal.
3. Her Written Submissions were dated 26th September 2024. They did not bear a court stamp. However, in view of the fact that documents were being filed through the e-filing platform, this court admitted



the same as there was a likelihood that the Registry may have omitted to stamp the same. The Respondent's Written Submissions were dated 8th January 2025 and filed on 20th January 2025. The Judgment herein is based on the said Written Submissions which both parties relied upon in their entirety.

Legal Analysis

4. It is settled law that the duty of a first appellate court is to evaluate afresh the evidence adduced before the trial court to arrive at its own independent conclusion bearing in mind that it neither saw nor heard the witnesses testify.
5. This was aptly stated in the case of *Selle & Another vs Associated Motor Boat Co Ltd & Others* [1968] EA 123 where the court therein held that the appellate court was not bound by the findings of fact of the trial court but that in re-considering and re-evaluating the evidence to draw its own conclusions, it always had to bear in mind that it neither saw nor heard the witnesses and thus make due allowance in that respect.
6. Having looked at the Grounds of Appeal, and the respective parties' Written Submissions, it appeared to this court that the grounds raised were related and therefore the issue that had been placed before it for determination was whether or not the Trial Court erred in the manner he distributed the deceased's estate.
7. The Appellant invoked Section 35 and 38 of the *Law of Succession Act* and argued that it was evident that the Respondent had re-married after the death of the deceased thus her life interest in the estate terminated upon her re-marriage. She was emphatic that whereas the estate ought to have devolved to her only, the Trial Court failed to distribute the same to her as the only surviving child of the deceased. She urged this court to set aside the distribution adopted by the Trial Court and redistribute the estate into her name.
8. On her part, the Respondent submitted that she was the surviving spouse of the deceased and she had never been re-married as was submitted by the Appellant. She pointed out that the Chief's letter clearly introduced her as the widow to the deceased and that the Appellant did not produce anything as evidence before the Trial Court to indicate that she was re-married.
9. When she was cross-examined, she stated that the Appellant recognised her as the deceased's wife. She contended that as no evidence was adduced to dispute that fact, she was therefore entitled to the personal and household goods with a life interest in the whole residence of the net estate.
10. It was her contention that the Trial Court did not therefore err in the manner the deceased's estate was distributed. In this regard, she relied on Section 35(1) of the *Law of Succession Act* and asserted that if the deceased's estate was to devolve to the Appellant only, she would be exposed to destitution. She was categorical that Section 38 of the *Law of Succession Act* did not apply in this case as the estate of the deceased ought to be distributed as per Section 35 as was held by the Trial Court. She urged this court to dismiss the Appeal herein and uphold the Ruling of the Trial Court on distribution.
11. Notably, in her testimony at the Trial Court, the Appellant testified that the Respondent was married to her father, the deceased herein. She informed the Trial Court that she used to stay with the deceased but left when she felt uncomfortable to live with the Respondent herein who was her step-mother. The Respondent also acknowledged her as the deceased's daughter.
12. A perusal of the Chief's letter dated 21st June 2018 indicated that the Respondent was the wife to the deceased while the Appellant was his daughter.



13. There was no contention in respect to the marriage between the deceased and the Respondent at the Trial Court. The Appellant could not therefore purport to raise the same on appeal.
14. Section 35 of the *Law of Succession Act*, Cap 160 (Laws of Kenya) provides as follows:-

“Where intestate has left one surviving spouse and child or children

(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.”

15. Having looked at the evidence on record and submissions by parties herein on the estate of the deceased and the mode of distribution, this court was of the view that this estate should be distributed and governed by the provisions of Section 35 of the *Law of Succession Act* as was held by the Trial Court which expressly catered for the surviving spouse and the surviving children of the deceased including those born outside the marriage therein.
16. In arriving at an appropriate formula on the mode of distribution in such a case as this, Section 35 of the *Law of Succession Act* had to be adhered to unless there were exceptional circumstances for the court to depart from the same.
17. This court had due regard to the case of *Tau Kakungi vs Margrethe Thorning Katungi & Another* [2014] eKLR, where the court observed that the purpose of Section 35 of the *Law of Succession Act* was to prevent a spouse of the deceased from being impoverished after the demise of the other by distributing the entire estate to the children. It stated as follows:-

“The effect of Section 35 (1) is that the children of the deceased are not entitled to access the net intestate estate so long as there is a surviving spouse. The children’s right to the property crystallizes upon the determination of the life interest following the death of the life interest holder or her remarriage. Prior to that, the widow would be entitled to exclusive right over the net estate...The device is designed to safeguard the position of the surviving spouse. The ultimate destination of the net intestate estate where there are surviving children is the children. It is the children who are entitled of right to the property of their deceased parent. However, if the property passes directly to the children, in cases where there is a surviving spouse, he or she is likely to be exposed to destitution. This would particularly be the case where the surviving spouse was wholly dependent on the departed spouse. She would be left without any means of sustenance.”



18. It was evident that the estate of a deceased person in which the surviving spouse had a life interest was not available for distribution to the children unless that spouse bequeathed them whatever he or she pleased. To this end, this court did not find reasons to disturb the finding of the Trial Court. The Appellant had failed to demonstrate that the Respondent had re-married. She was thus not entitled to life interest in the whole residue of the net intestate estate of the deceased to the exclusion of the Respondent herein.

Disposition

19. For the foregoing reasons, the upshot of this court's decision was that the Appellant's Appeal dated and lodged on 17th February 2022 was not merited and the same be and is hereby dismissed.

20. As this was a family matter, this court deviated from the general rule that costs follow events and directs that each party bears its own costs of this Appeal so as to preserve the family ties.

21. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 30TH DAY OF APRIL 2025

J. KAMAU

JUDGE

