



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO.2731 OF 2015

IN THE MATTER OF THE ESTATE OF KENNETH ROY MUGAI (DECEASED)

VIRGINIA WANGECHI KINYUA....1ST PETITIONER

ROSE EVELYN NJERI.....2ND PETITIONER

VERSUS

JANE WANGARI MUCHIRI.....OBJECTOR

JUDGEMENT

1. The deceased Kenneth Roy Mungai died intestate on the 15th of May 2015.

His sister Rose Evelyn Njeri and his widow Virginia Wangechi Kinyua applied for grant of letters of administration which were issued on 25th February 2016.

2. It has been ascertained that the deceased left 4 bank accounts that hold an estimated sum of Kshs.11,000,000/- and & L.R No. Laikipia Uaso Narok/980 as part of the Estate.

3. The administrators filed for confirmation of grant on the 29th of January 2018 seeking to distribute the estate. They had proposed to share the estate amongst the following; -

The wife (Virginia)

Mother (Karen)

Daughter (Celine)

Son (Roy Kenneth Junior)

A nephew (Jerry Auvagha)

4. One Jane Wangari Muchiri filed an objection to the making of the grant on 24th May 2014 claiming to have been a wife to the deceased and the mother to Celine Wangui Shammar. According to the objector, the only dependents of the deceased at the time of his death were two widows, a daughter and a son.

5. She denied the other beneficiaries named in the application for confirmation and proposed that the 4 beneficiaries she name share the estate equally at 25% each.

6. The Petitioners on their part denied the alleged marriage between the objector and the deceased. Their case is that the Objector & the deceased were in a relationship as boyfriend/girlfriend when Celine was born. The two lived together for a very short while after which the objector walked away leading to the marriage between the deceased and Virginia. Further the objector got into another relationship and had child. The Petitioners do however recognize the fact that Celine the Objector's daughter is a child of the deceased and a beneficiary of the Estate.

7. The matter proceeded for hearing by way of *viva voce* evidence with the Objector calling 3 witnesses and the Petitioners 4 witnesses.

8. The court having considered the evidence before it, submissions and authorities cited by the parties, has formed the opinion that the issues before it for determination are as follows; -

a) Whether the objector was married to the deceased"

b) Who are the heirs of the deceased" and

c) How should the estate be distributed"

9. Was the deceased married to the objector"

There is no disagreement that the deceased and the objector were in a relationship which resulted in the birth of a daughter Celine on March 2009. According to the objector she met the deceased in December 2006 while she was a student at Catholic University of East Africa. At the time the deceased lived in Eastleigh with his mother. He later relocated to Uthiru in his own house where she went to live with him after her graduation ceremony in October 2008 where the deceased gave her an engagement ring. Further when she went into labour he was with her at his house and he took her to hospital. When the baby was born, he named her 'Gathoni' after his mother in accordance with Kikuyu customs. On leaving hospital she went with the baby to live with the deceased however, the deceased wanted her to be a housewife, they disagreed on this and she left for her mother's place.

10. The following October the deceased asked her and the mother for a date when they could have a Kikuyu traditional wedding and they settled for 10th October 2010. The deceased with his mother, uncles and aunts visited her side where her aunts, uncles and friends were invited. At the gathering there were dowry negotiations. They later were to part ways towards end of 2010 but kept in contact as the deceased used to visit and even bought them a T.V.

Later the objector got a child outside marriage in 2014. She considers herself as a widow.

11. Bernard Willy Bhachu a family friend who was the objector's family spoke's man on 10th October 2010 and Gladys Wangui Muchiri the objector's mother confirmed the ceremony of the 10th of October 2010. Gladys stated in her witness statement said

"Thereafter Kenneth Mungai's uncles and aunts and my relatives agreed to hold the dowry negotiations called ruracio."

Mr. Bhachu on his part stated

“We then started dowry negotiations. Kenneth Roy Mungai’s uncle then stated that they had come with their initial dowry in the amount of Ksh.30,000/- comprising;

Muati umwe (one hive)	Ksh.10,000/-
Harika imwe (one she goat)	Ksh.10,000/-
<u>Mburi Ithano</u> (5 sheep/goats)	Ksh.10,000/-
Total	Ksh.30,000/-

Gladys confirmed receipt of Kshs.30,000/- which in her statement she called initial dowry amount.

12. The deceased mother and sister refute that any dowry was paid. The mother Karen Gathoni in refuting the allegation stated that the visit was an introductory meeting with the intention of knowing the objector’s home. She called the visit “*kumenya mucii*”.

She further stated that upon visiting on the 10th of October, they met a hostile environment and the objector said she had not made up her mind on whether to marry her son. That after the meal, they left the shopping they had taken, and the deceased gave some money but no dowry negotiations took place. Later that year she learnt that Ken and the objector had separated and the objector had carried all her belongings and those of the child. She was also to learn from her son that the relationship between them had become hostile that he was not allowed to see the child. That the deceased had to go to court to access his child and that the objector had gone to the extent of changing the child’s name. As a result, her family concluded the objector was not interested in the relationship.

13. And in November 2010 they visited Virginia’s home and paid dowry for her. She is not aware that her son supported the objector. Further Rose Njeri the deceased’s sister stated that did not accompany the deceased in the visit the objector’s home. The visitation was not about dowry that is why she did not attend as she was working on the day.

14. The necessary ingredients of a Kikuyu Customary marriage are well known and settled. In Eugene Contran’s Case Book on Kenya Customary Law the same are itemized as follows:-

- a) Capacity to marry.
- b) Consent (as between the parties and their families)
- c) *Ngurario* – (no marriage is valid under Kikuyu Customary Law unless the ram is slaughtered).
- d) *Ruracio* –(there cannot be valid marriage unless part of dowry is paid).
- e) Commencement of cohabitation.

15. In Nderitu Ndirangu vs Patrick Mwago Wanjau [2011] eKLR the High Court stated as follows in regards to Dowry; -

“Ngurario ceremony is what seals a marriage and there can be no valid marriage without Ngurario (slaughtering of a ram) ...”

In Mary Wanjiru Githatu vs Esther Wanjiru Kiarie the Court of Appeal Civil Case No. 20 of 2019 in Judge Nyamu (Rtd) stated

“.... Customary law marriages have some important ingredients without which they cannot possibly qualify as such. The ingredients are essential in the making of a customary law marriage. A customary law marriage is a covenant of marriage sealed by the other necessary customary ingredients and for the Kikuyu these ingredients are well known and documented....”

16. Considering the evidence before court clearly the necessary steps to seal a Kikuyu Customary marriage were not proved by the objector. The court believes the evidence of the deceased’s mother that the October visit was a mere visit to know the objector’s home. Even if one was to agree that the Ksh.30,000/- was initial dowry the most important ceremony the *Ngurario* was not performed therefore ruling out Kikuyu customary marriage.

17. The parties lived on and off. From her own evidence the objector acknowledges so. Indeed, after October 2010 visit by the deceased family she barely stayed with him. In fact, as if in a rush and eagerly wanting to settle down in November of the same year after the objector left his house, the deceased paid dowry for Virginia.

Both the deceased and the objector moved on after the objector left. Indeed, the Objector got herself involved elsewhere and got a son.

18. Despite the narrative of the Objector that they were in communication and the deceased used to visit, they were more apart than together.

19. Based on the above the court declines to find that there was a marriage between the two.

Celine the daughter between the two is acknowledged as a beneficiary of the deceased Estate. The court affirms the same.

20. It is generally accepted that Virginia is the deceased widow and the two sired a son and there is no dispute that they are beneficiaries of his Estate. In issue is whether the deceased mother, the grandmother and the nephew are beneficiaries. The sister withdrew her claim.

21. Section 29 of the Law of Succession Act defines dependents of a deceased person to includes wife, wives, former wife or wives, children of the deceased whether or not maintained by him at the time of death, parents, step parents, grandparents, stepchildren... children who the deceased had taken in and were being maintained by the deceased prior to his death.

22. In their evidence Virginia, Rose and Karen is that the deceased took care of Karen’s upkeep after her retirement. The court has no reason to doubt this evidence. Under the definition above she qualifies as a dependant. As in an African setup it is not lost that in old age parents rely on their children to take turn to care for them. This is not farfetched it is a reality in many homes.

23. As for Jerry Auvagha, at the time of hearing the case he was doing his last year at the University. He must have by now completed his under graduate degree course. There is evidence that his uncle, the deceased, who was generous bought him gifts, took him on holiday from time to time and even paid his secondary school fees a couple of times. That in itself does not make him a dependant. The deceased left behind a small estate and young children aged 12 and 10 years, who need adequate upkeep so that they can also go to university level without much struggle. The court decline to find that Jerry was a dependent.

24. As for the deceased grandmother nothing much was said of her. There was therefore no prove that she dependent on him prior to his death.

25. Doing the best, the court distributes the estate as follows

Roy Kenneth Muigai Junior - Ksh.4,000,000/-

Celine Gathoni Muigai - Ksh.4,000,000/-

Virginia Wangui Kinyua - Ksh.1,500,000/- & L.R No.
Laikipia Uaso Narok/980.

Karen Gathoni - Ksh.1,500,000/-

26. Each party to bear their own costs.

DELIVERED AND SIGNED AT GARISSA THIS 17th DAY OF MARCH, 2022

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ALI ARONI

JUDGE



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