REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1324 OF 2013

IN THE MATTER OF THE ESTATE OF FAITH MUITA (DECEASED)

RULING

1. The application I am called upon to determine is dated 8th October 2013. It seeks a variety of orders. It concerns funds due from an insurance policy that has matured and the funds released to the respondents who are said to have refused to pay the same to the administrators of the estate of the deceased, who was one of the persons the subject of the group insurance policy.

2. The respondents have resisted the application. Their primary argument is that the funds in question do not accrue to the estate of the deceased for they never formed part of her free property which she could will away as she pleased. They urge that the matter is not the subject of the Law of Succession Act, Cap 160, Laws of Kenya, but of the Insurance Act, Cap 487, Laws of Kenya. It is their case that the issue of intermeddling with estate funds does therefore not arise.

3. When the matter was placed before me on 25th May 2015 the parties proposed to dispose of it by way of written submissions. I granted their request and directed them to file their respective written submissions within given timelines. The parties did file their respective written submissions which I have had occasion to peruse.

4. It is common ground that the funds the subject of these proceedings was subject to a nomination. The said nomination appears as an unnumbered annexture to the affidavit of the applicant sworn on an unknown date in 2013, but filed in court on 8th October 2013. The document in question is headed 'Group Life Assurance Beneficiary Nomination Form.' In it, the member of the group assurance scheme, the deceased herein, names the beneficiaries of the policy should it accrue. The names indicated are of E K and Isabella M, her son and her mother, respectively. It is signed by both the member and a representative of the employer. As one of the dependants or nominees is a child, the deceased nominated CM, her sister, as the guardian of the minor for the purposes of the nomination.

5. Is money that accrues to a nominee named in an insurance policy payable to the estate of the member of the insurance scheme" I should think the answer to that question is in the negative. The funds would not be due to the deceased or her estate, but to the persons she has named as the beneficiaries of the scheme. The persons named in the nomination form as beneficiaries, are the persons to whom the assured funds ought to be paid in the event the policy matured upon the death of the member. Clearly, the nominated funds were not payable to the deceased or to her estate. Upon her death, the assured sum was to be paid to the person she had nominated, in this case E K and I M.

6. Nominations are devices that operate outside of the law of succession. A nomination is defined (see

Parry and Clark: *The Law of Succession*, 11th edition, Thomson/Sweet & Maxwell, London, 2002 pg. 4 and Catherine Rendell: *Law of Succession*, Macmillan, London, 1997 pgs. 10 and 11) as a direction given by a nominator to another person or entity who or which is holding funds on her behalf, to pay the funds on the nominator's death to a nominee appointed by the nominator during the nominator's lifetime. The nomination or direction by the nominator only takes effect after the death of the nominator.

7. One other thing to note about nominations is that they operate under the rules of a particular scheme. Although they dispose of property upon death, they do not comply with the requirements of a will, and they are therefore not subject to the law of succession. The property the subject of a nomination does not form part of the nominator's estate, for the reason that the funds are meant to be paid to the nominee of the nominator. The person to whom the funds ought to be paid is designated. Nominated funds cannot pass by the will of the nominator. The said funds, the subject of the nomination, cannot vest in the personal representatives of the nominator for the simple reason that they do not form part his or her estate. It is for that reason that the person holding the funds, or the scheme manager, need not require a grant of representation before paying out the funds to the nominee or beneficiaries. The direction is that the funds be paid out on death, so the person holding the funds should only require proof of death before making the payment.

8. The only time nominated funds would fall for distribution in accordance with the law of succession is when the nomination has been revoked by either the subsequent marriage of the nominator or by the death of the nominee before that of the nominator. In both cases there would be no valid nomination, and therefore no nominee would be in place to be paid the proceeds of the policy. In such cases the funds would be estate property vesting in the administrators. Where the nominee dies after the nominator's death, the nomination would still be valid, and the funds would accrue to the estate of the nominee, and would vest in the nominee's personal representatives.

9. In the instant case, the nomination dated 14th May 2012 was a direction given to the Jubilee Insurance Company of Kenya Limited, which was holding funds on behalf of the deceased in an insurance scheme arranged by her employer, to pay those funds on her death to E K and I M. So for all purposes the funds in question were nominated to the two, and that that very act removed the said funds from the reach of the estate of the deceased, and from the application of the law of succession. As mentioned above, nominations operate under the rules of a particular scheme. In this case, this was an insurance scheme. The rules governing the scheme are to be found in the Insurance Act. A party facing any difficulties with the operations of the scheme, particularly with the processing of claims, ideally should pursue their claim through the channels put in place by the Insurance Act.

10. I must state that no evidence has been furnished to the effect that the nominations of E K and I M had been revoked, either by the subsequent marriage of the deceased or by the death of either or both nominees. All pointers are that the two (2) nominees are still alive, healthy and hearty, and entitled to be paid what is due to them under the nomination.

11. Certainly, this is not a probate matter. The funds being fought over do not form part of the estate of the deceased. They do not vest in the administrators appointed herein to administer the estate of the deceased. Disputes over such funds should not be entertained in this cause. The applicants are better off pursuing a remedy, if they have any, elsewhere.

12. In view of what I have stated so far, I need not comment on the negotiations that took place between the applicants and the respondents, culminating in the agreement signed between them on 9th July 2013, lest I prejudice the outcome of any other proceedings that the applicants may be minded to mount elsewhere. Neither will I comment on whether the respondents are entitled to the 'claw back' for the

same reasons.

13. The application dated 8th October 2013 is misconceived and wholly without merit, for the reasons that I have advanced above. I hereby dismiss it, with costs to the respondents.

DATED, SIGNED and DELIVERED at NAIROBI this 26TH DAY OF OCTOBER, 2016.

W. MUSYOKA

JUDGE

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAJIADO

SUCCESSION CAUSE NO. 12 OF 2018

IN THE MATTER OF THE ESTATE OF PETER SIMEL MUSE LENGAKAH ALIAS PETER SIMEL MZEE ALIAS OLE KISIO ALIAS PETER S.M LENKANAH ALIAS PETER SIMEL M.LENKAKASH (DECEASED)

GRACE NDUTA MWENDIA.....1ST APPLICANT

MOSES ALEX MUIRURI.....2ND APPLICANT

VERSUS

PURITY HANNAH WANJIKU SIMEL.....1ST RESPONDENT

MARY NASERIAN MUTHEE.....2ND RESPONDENT

JUDGEMENT

Background

The Applicants brought this Application to revoke the grant of letters of administration issued to the Respondents herein on the 11thday of June 2018 on the main ground that the same was obtained fraudulently and by the concealment of material facts from the court.

The 1st Applicant's claim is that she is the 2nd wife to the deceased while the 2nd Applicant is her son with the deceased. 1st Applicant claims that she has been married to the deceased for a period of 24 years stretching from the date of his death backwards. She claim the said marriage resulted in two issues. Initially, there is no despite regard the marriage between the 1st Respondent and the deceased. This marriage was blessed with three issues.

These two families lived in separate homes. The 1st Applicant claims that these two families are well known to each other while the 1st Respondent claims not to have known of the 1st Applicant and her children before the death of her husband. She further claims that they came into picture after the death of her husband just to benefit from his estate. The Respondents reiterated that no marriage existed between the 1st Applicant and the deceased.

The Applicants filed supporting, supplementary affidavits and exhibits annexed thereto as well as submissions in support of their case. The same was vehemently opposed by the Respondents by way of several affidavits and as well as written submissions filed before this court.

The Applicant's Case

Martin who is still alive and ready to testify. She further stated that she gave her husband (deceased) the priority to place every property they had in his own name since she did not know that the applicant or any other person would claim a share of the estate.

The 1st Respondent stated that she got money from the stones she used to sell at Kware. Further that, the Applicant must be having properties somewhere which she acquired during the period she claims she was married to the deceased. Further that, throughout her marriage with her deceased husband, he had never slept outside the matrimonial home.

She reiterated that the Applicant is not entitled to any inheritance and should not be given any share as she is not a beneficiary of the deceased estate. She also stated that the motor vehicle registration number KBW 319A was her late husband car. That the logbook has not been handed to her hence she was not able to include as one of the assets in absence of registration document. The respondent also questioned the aunthencity of the birth certificates and also all documents relevant to obtaining birth certificates of the children.

Law and Analysis

The deceased herein died without having made a will hence this is a matter of intestate succession. The question as to who is entitled to the property of the estate of the deceased is determined by intestate administration. Certain provisions are made by the Law of succession Act to cater for both monogamous and polygamous situations and the manner in which property devolves upon intestacy depends on whether the deceased was polygamous or monogamous. I'm alive to **Section 29** of the **Law of Succession Act** which provides:

"For the purposes of this Part, "dependant" means –

(a) The wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;

(b) Such of the deceased's parents, step-parents, grandparents, grandchildren, step children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death;..."

In light of the foregoing provision of law, one can easily deduce that the spouses and children of the deceased have priority to inherit his estate. It is not in dispute that Peter Simel Musee Lenkakash died intestate on the 2nd of February, 2018 and buried on 8th February, 2018.

The question to ponder is as to who stands to benefit from the free property which constitute the estate of the deceased. That is the main issue in dispute in this particular case which I now endeavor to interrogate.

The administrators (Respondents) herein petitioned for grant of letters of administration on the 26th day of February, 2018 and the grant was granted on the 11th day of June, 2018. Subsequently, an objection was filed on the 19th of September, 2018 against the issuance of the said grant seeking: (a) Fonservatory orders restraining the respondents herein from intermeddling with the estate of the deceased pending hearing and determination of the application dated 31st August, 2018. (b) For revocation and/or annulment of the letters of administration intestate granted to the 1st and 2nd Respondents.

The 1st Applicant claims that she has been married to the deceased for 24 years and they were blessed with two issues. It is on that basis that she brought summons for revocation of the grant issued to the Respondents citing that the said grant was fraudulently obtained by making false statements or by deceit or by concealment from the court issues which were material to the court. It is in that regard that she claims that she and her children ought to be included to the list of beneficiaries and the estate be distributed in accordance with the provisions of **Section 40** of the Law of Succession Act. In that respect the 1st Applicant is claiming that she is a wife for the purposes of succession. I'm alive to the provisions of **section 3(5)** of the **Law of Succession Act** which provides thus:

"Notwithstanding the provisions of any other written law, a woman married under a system of law which permits polygamy is, where her husband has contracted a previous or subsequent monogamous marriage to another woman, nevertheless a wife for the purposes of this Act, and in particular sections 29 and 40 thereof, and her children are accordingly children

It is also worth noting that Waithera did not provide any description or particulars of the alleged ceremony; her evidence is clear, "...there was no marriage..." **Essentially, her testimony was limited to 2008 when the deceased, together with one Joseph and Karanja, who are elders and his friends, visited her parents to introduce the deceased as the person who intended to marry her. It would seem that it remained just that: an intention, to marry. The learned judge erroneously concluded that Waithera was married to the deceased under the Kikuyu-Maasai Customary Law, despite the cogent evidence that the essentials of such a marriage were not satisfied. In our view, this omission negated the existence of a Kikuyu customary marriage, and we so find."**

Therefore, on the essentials of a valid kikuyu marriage, Cotran concludes that:

"No marriage is valid under Kikuyu law unless the ngurario ram is slaughtered" and that *"there can be no valid marriage under Kikuyu law unless a part of the ruracio has been paid."*

In applying the foregoing to the instant case, I shall turn to the supplementary affidavit dated 18th day of October 2018, the Applicant labored to show the steps that were taken by the deceased to solemnize his marriage with the 1st Applicant. She averred and stated that the deceased in company of his brother PW2 and other elders visited her parents' home in 1997 and he paid Kshs. 10,000/= to "know the home" and another Kshs. 15,000/= to "place a Marker" also known as *Kuhanda ithigi* and told the steps he was to follow to solemnize the marriage. I have a memo dated 2nd August, 1997 to that effect herein marked as "GNM1". She told the Court deceased later delivered two goats (known as *Mwati and Harika"*), paid dowry of Kshs. 100, 000/=, Kshs. 10,000/= for elders'bear, Kshs. 5, 000/= for women's soda and 36 shawls *(shukas)* for women. She annexed a hand written note dated 29th April, 2017 herein marked as GMN 2.

She also testified and averred that both occasions were attended by the relatives of the deceased, among them Mary Naserian, who is a surety in the Respondents' Petition. Daniel Lemayan Ole Kisio affirmed the first applicant's claim that she conducted a customary marriage with the deceased. In his statutory statement dated 28th October, 2018 he stated that he accompanied his brother together with some elders to pay dowry to her parents in Elburgon in 2017.

In light of the foregoing account on the steps that were taken by deceased in a bid to solemnize his marriage with 1st Applicant, it is important to note that Customary Law cannot be expected to be static over time. Since it is a human invention, it is certainly dynamic and keeps evolving from generation to generation. The evidence on record suggest that the deceased family visited the 1st Applicant's family for introductions. One of the key ingredients of Kikuyu customary marriage is *ruracio* (dowry) and there can be no valid marriage under Kikuyu law unless a part of it has been paid. I have noted that negotiations were made and families of two consented to the marriage. This can be inferred from the fact that the parties proceeded to agree on the dowry which was partly paid. Thus, in my view dowry can only be paid by the groom's family and accepted by the bride's family after negotiations on the same have been conducted and an agreement has been reached upon on the manner in which it is to be paid.

In the instant case dowry was paid by the deceased's family to the family of the 1st Applicant. The steps taken by the deceased herein to solemnize his marriage cannot be faulted hence this court finds that the 1st Applicant was duly married to the deceased under the Kikuyu customary law.

Having made the above finding that a Kikuyu customary marriage existed between the Deceased and the 1st Applicant, I shall proceed to comment some of the issues that were raised by the Respondents.

The Respondents in their replying affidavit as well as their written submissions question the 1st Applicant's marriage to the deceased. It was contended that if indeed she was married to the deceased for 24 years, she ought to have made an effort to know the deceased's other family. Further that she ought to have made an effort to ensure that the deceased's children know the other family members who are their step-brothers and sister.

In the event that I'm found wrong that I did not analyse and evaluate this fulfilment of customary law, then I ask the question as to whether the facts of this case may satisfy the principles of presumption of marriage. The doctrine of presumption of marriage has its genesis in **Section 119** of the **Evidence Act**, Cap. 80 of the Laws of Kenya which states that:-

"The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common

"I agree with the trial Judge that the onus of proving that she was married to the deceased was on the appellant. But in assessing the evidence on the issue, the trial Judge omitted to take into consideration a very important factor. Long cohabitation as man and wife gives rise to a presumption of marriage in favour of the appellant. Only cogent evidence to the contrary can rebut such a presumption."

In light of the above, it is crystal clear that a marriage by way of presumption requires proof of cohabitation for a length time and that the two have acquired the reputation of being a wife and husband. In this objection proceedings the evidence on record shows that the 1st Applicant and deceased had lived together for 24 years which is quite a long period of time. They were also blessed with two issues during the time they were lived together. The question to be answered is whether this cohabitation resulted into a presumed marriage. According to the **Black's Law Dictionary**, 9th Edition at page 296,'***cohabitation***' is defined as follows: -

"The fact or state of living together, esp. as partners in life, usu with the suggestion of sexual relations."

In terms of **section 2** of the the **Marriage Act**, to '***cohabit***' means:

"to live in an arrangement in which an unmarried couple lives together in a long-term relationship that resembles a marriage."

Thus, in my view ***Cohabitation*** as a central issue in presumed marriages therefore entails a length and continuous living together of a couple holding themselves out as a husband and wife but in the absence of any formal marriage. The capacity of the 1st Applicant and deceased to marry is not in doubt. In the instant case, the 1st Applicant averred that she had been continuously married to the deceased for 24 years. They were blessed with two issues during that time, one of which is over 24 years. The evidence of Daniel Ole Kisio is that he has known the 1st Applicant as a wife to his deceased brother since on or about 1994 when they started living to gather. He affirmed the 1st Applicant's claim that she sired two children during the subsistence of her marriage with the deceased. Further that the 1st Applicant and the 1st Respondent are the 1st family.

Further, the testimony of Paul Kimani Gichuri and that of Steven Karanja Njoke corroborates the 1st Applicant's position. They both acknowledged that they have known the 1st Applicant and the deceased as husband and wife. Steven Karanja Njoke who claimed to be a family friend to the deceased family also stated that the 1st Applicant used to manage the deceased business at Kileleshwa where her late husband owned a butchery and a grocery shop. They lived together at Kware in Ongata Rongai.

He further stated that as a family friend he used participate in almost all their family and social activities both at the 1st Applicant's home in Ongata Rongai and at her parents' home in Elburgon. He also gave an account on what transpired prior to the burial of the deceased. He stated that he was the chairman of the burial committee which represented both families, to wit, Grace and Purity's families. That the burial committees drafted the death announcement which was to appear in the daily newspapers comprising both wives and their children. He was surprised on the 8th of February, 2018 the day after the burial, to find out that another death announcement in the Daily Nation Newspaper which excluded the names of Grace and those of her children.

One of the objections raised by the 1st Respondent in the instant case is that the 1st Applicant was not known either or the rest of her family. In an Africa marriage of a polygamous nature the duty to bring the other spouses to interact as family unit is vested in the husband during the subsistence of the marriage. The rights of any one spouse shall not be extinguished upon demise of the husband for the reason that she was not introduced to the other surviving spouses.

I refer to the applicant's supplementary affidavit dated 18th October, 2018. It lists several instances which show that the 1st applicant and her children were well known and part of the deceased family. Several photographs were also annexed which depicts a visit by the deceased's sister Hanna Moijoi (deceased). Annextures marked as **GNM 9(a)** to **(e)** are several photographs which were also taken by the deceased. I note that this evidence is uncontroverted by the respondents. As the widow of the deceased the 1st applicant as demonstrated by way of photographic evidence their life and history of cohabitation with the deceased.

I therefore discount the argument advanced by the 1st Respondent in this succession cause that the Applicant was a stranger and a busy body for the reason that she was not known to her prior to the death of deceased. The applicant cannot also be faulted that in accordance with the new marriage act, that she had not registered her customary marriage with the registrar of marriages. For the Kenyan people the provisions of the new Act is yet to sink in their minds that a marriage which has been in existence for decades

KENYA LAW
Where Legal Information is Public Knowledge

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1324 OF 2013

IN THE MATTER OF THE ESTATE OF FAITH MUITA (DECEASED)

RULING

1. The application I am called upon to determine is dated 8th October 2013. It seeks a variety of orders. It concerns funds due from an insurance policy that has matured and the funds released to the respondents who are said to have refused to pay the same to the administrators of the estate of the deceased, who was one of the persons the subject of the group insurance policy.

2. The respondents have resisted the application. Their primary argument is that the funds in question do not accrue to the estate of the deceased for they never formed part of her free property which she could will away as she pleased. They urge that the matter is not the subject of the Law of Succession Act, Cap 160, Laws of Kenya, but of the Insurance Act, Cap 487, Laws of Kenya. It is their case that the issue of intermeddling with estate funds does therefore not arise.

3. When the matter was placed before me on 25th May 2015 the parties proposed to dispose of it by way of written submissions. I granted their request and directed them to file their respective written submissions within given timelines. The parties did file their respective written submissions which I have had occasion to peruse.

4. It is common ground that the funds the subject of these proceedings was subject to a nomination. The said nomination appears as an unnumbered annexture to the affidavit of the applicant sworn on an unknown date in 2013, but filed in court on 8th October 2013. The document in question is headed 'Group Life Assurance Beneficiary Nomination Form.' In it, the member of the group assurance scheme, the deceased herein, names the beneficiaries of the policy should it accrue. The names indicated are of E K and Isabella M, her son and her mother, respectively. It is signed by both the member and a representative of the employer. As one of the dependants or nominees is a child, the deceased nominated CM, her sister, as the guardian of the minor for the purposes of the nomination.

5. Is money that accrues to a nominee named in an insurance policy payable to the estate of the member of the insurance scheme" I should think the answer to that question is in the negative. The funds would not be due to the deceased or her estate, but to the persons she has named as the beneficiaries of the scheme. The persons named in the nomination form as beneficiaries, are the persons to whom the assured funds ought to be paid in the event the policy matured upon the death of the member. Clearly, the nominated funds were not payable to the deceased or to her estate. Upon her death, the assured sum was to be paid to the person she had nominated, in this case E K and I M.

6. Nominations are devices that operate outside of the law of succession. A nomination is defined (see

Parry and Clark: *The Law of Succession*, 11th edition, Thomson/Sweet & Maxwell, London, 2002 pg. 4 and Catherine Rendell: *Law of Succession*, Macmillan, London, 1997 pgs. 10 and 11) as a direction given by a nominator to another person or entity who or which is holding funds on her behalf, to pay the funds on the nominator's death to a nominee appointed by the nominator during the nominator's lifetime. The nomination or direction by the nominator only takes effect after the death of the nominator.

7. One other thing to note about nominations is that they operate under the rules of a particular scheme. Although they dispose of property upon death, they do not comply with the requirements of a will, and they are therefore not subject to the law of succession. The property the subject of a nomination does not form part of the nominator's estate, for the reason that the funds are meant to be paid to the nominee of the nominator. The person to whom the funds ought to be paid is designated. Nominated funds cannot pass by the will of the nominator. The said funds, the subject of the nomination, cannot vest in the personal representatives of the nominator for the simple reason that they do not form part his or her estate. It is for that reason that the person holding the funds, or the scheme manager, need not require a grant of representation before paying out the funds to the nominee or beneficiaries. The direction is that the funds be paid out on death, so the person holding the funds should only require proof of death before making the payment.

8. The only time nominated funds would fall for distribution in accordance with the law of succession is when the nomination has been revoked by either the subsequent marriage of the nominator or by the death of the nominee before that of the nominator. In both cases there would be no valid nomination, and therefore no nominee would be in place to be paid the proceeds of the policy. In such cases the funds would be estate property vesting in the administrators. Where the nominee dies after the nominator's death, the nomination would still be valid, and the funds would accrue to the estate of the nominee, and would vest in the nominee's personal representatives.

9. In the instant case, the nomination dated 14th May 2012 was a direction given to the Jubilee Insurance Company of Kenya Limited, which was holding funds on behalf of the deceased in an insurance scheme arranged by her employer, to pay those funds on her death to E K and I M. So for all purposes the funds in question were nominated to the two, and that that very act removed the said funds from the reach of the estate of the deceased, and from the application of the law of succession. As mentioned above, nominations operate under the rules of a particular scheme. In this case, this was an insurance scheme. The rules governing the scheme are to be found in the Insurance Act. A party facing any difficulties with the operations of the scheme, particularly with the processing of claims, ideally should pursue their claim through the channels put in place by the Insurance Act.

10. I must state that no evidence has been furnished to the effect that the nominations of E K and I M had been revoked, either by the subsequent marriage of the deceased or by the death of either or both nominees. All pointers are that the two (2) nominees are still alive, healthy and hearty, and entitled to be paid what is due to them under the nomination.

11. Certainly, this is not a probate matter. The funds being fought over do not form part of the estate of the deceased. They do not vest in the administrators appointed herein to administer the estate of the deceased. Disputes over such funds should not be entertained in this cause. The applicants are better off pursuing a remedy, if they have any, elsewhere.

12. In view of what I have stated so far, I need not comment on the negotiations that took place between the applicants and the respondents, culminating in the agreement signed between them on 9th July 2013, lest I prejudice the outcome of any other proceedings that the applicants may be minded to mount elsewhere. Neither will I comment on whether the respondents are entitled to the 'claw back' for the

The directions of this Court followed arguments regarding whether the order dated 20th March 2013 was a provisional one or a final payment. It was the petitioner's case that the request for Kshs.10,000,000/= was misplaced and would not be afforded by the estate.

7. This Court is called upon to determine what is the reasonable provision that is due to the objector. This is because the petitioner and her son have agreed to equally share the remainder of the net estate.

8. **Section 27** of **The Law of Succession Act (Cap 160)** provides that:-

"In making provision for a dependant the court shall have complete discretion to order for a specific share of the estate to be given to the dependant, or to make such other provision for him by way of periodical payments or a lump sum, and to impose such conditions, as it thinks fit."

Section 28 of the **Act** provides that in determining the amount payable to the dependant, the court should have regard to:-

a. the nature and amount of the deceased's property;
b. any past, present or future capital or income from any source of the dependant;
c. the existing and future means and needs of the dependant;
d. whether the deceased had any advancement or other gift to the dependant during his lifetime;
e. the conduct of the dependant in relation to the deceased;
f. the situation and circumstances of the deceased's other dependants and the beneficiaries under any will; and
g. the general circumstances of the case, including, so far as can be ascertained, the testator's reasons for not making provision for the dependant.

9. The objector stated that she is of advanced age and require funds for medical attention, transportation and other incidentals, and living expenses. She wants these for the rest of her life. The response by the petitioner was as follows:-

"14. THAT ULDA ALOO OJODE has provisions and benefits from the Estate of her late husband and continues to receive support and provisions as elaborated in my earlier affidavit herein.

15. That ULDA ALOO OJODE sought for in the presence of Hon Kimaru J and received her full entitlement as she sought from the Estate.

16. THAT the liabilities of the Estate in any event far outstrips the Assets and any demand from the Estate as made by ULDA ALOO OJODE cannot be sustained even if ULDA ALOO OJODE was entitled as proposed by her.

17. THAT in her circumstances and in the interest of justice, now that the deceased is no more, the more than four working and well paid children of ULDA ALOO OJODE should not take over and deal with any additional and financial requirement she may have over and above what the Estate has provided for her and what her late husband left for her which I indeed submit is more than enough to sustain her for the rest of her life.

18. THAT the deceased son is still undergoing University Education in the United Kingdom and as such needs massive financial support.

JUDGE