



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO. 259 OF 2004

IN THE MATTER OF THE ESTATE OF THE LATE JOHN MBUTHIA WARURINGI (DECEASED)

RULING

On the 18th day of July 2019, the Hon. Justice A. K. Ndung'u held in abeyance the Confirmation of Grant in this matter pending the appearance of the Chief Lanet Location to shed light on the whereabouts of the children of the deceased herein above and Jane Chepkoech Bosuben.

The reason was that Jane had been the administrator of the estate and together with her children, were the beneficiaries of the estate as named in the said Chief's letter. Unfortunately Jane passed on as well and Julia Muthoni was appointed as the new administrator.

I took over the matter at the time the said Chief was being looked for as he had already retired. For some reason he could not be traced. I have mentioned the matter severally for his attendance to no avail and Julia the current administrator states that she does not know the said children. The issue then is how does the court preserve the share of the children in case they show up as adults to claim their share of their father's estate?

This is a peculiar case where the administrator does not know them or their whereabouts. None of their relatives is known to the administrator. She may not have the wherewithal to search for these children.

In making a determination in their best interests I find guidance in **Section 66 of the Law of Succession Act**. It states.

“Preference to be given to certain persons to administer where deceased died intestate When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

(a) surviving spouse or spouses, with or without association of other beneficiaries;

(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

(c) the Public Trustee; and

(d) creditors:”

The Public Trustee holds a special position in these matters. That office is entrusted with the powers of an administrator who has no vested interests in the property except to deal with it in accordance with the law.

In this case, Jane Chepkoech Bosuben was registered identity card number 8744932. There must be details about her with the Registrar of Persons and the Registrar of Births and Deaths that can assist to track down her two daughters Valentine Cheron Mbuthia and Vivian Chebet Mbuthia.

To enable this, it is my view that the Public Trustee be made a party to this cause.

I therefore make the following orders:

1. That Summons for confirmation of the grant herein be held in abeyance until further orders of this Court.

2. The Public Trustee is appointed administrator of the Estate of Jane Chepkoech Bosuben for purposes of pursuing the interests of her children in this cause.

3. This order be served on the Public Trustee.

4. Mention in court on the 28th January 2021 for directions.

5. Orders accordingly.

Dated this 13th January 2021

Mumbua T Matheka

Judge

Delivered virtually this 21st day of January 2021

In the presence of:

Court Assistant: Edna

Counsel for the administrator: Ms Njoroge for the objector