



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO. 158 OF 2005

IN THE MATTER OF THE ESTATE OF DICKSON KIHKA KIMANI (DECEASED)

ERISHIFA WANJIRU KIHKA.....APPLICANT

RULING

1. This is a ruling on application dated **1st November 2019** filed by **Erishifa Wanjiru Kihika** the daughter of the **1st** administrator of the deceased estate seeking the following orders:

a. That Margaret Wambui Kihika who is the 1st Administrator of the estate of Dickson Kihika Kimani the deceased be substituted with Erishifa Wanjiru Kihika and that the grant of letters of administration intestate issued on the 13th day of October 2019 be rectified/amended accordingly.

b. That this honorable court be at liberty to issue such other or further orders as it shall deem fit to grant in respect of the estate of Dickson Kihika Kimani (deceased)

c. That the costs of the application be provided for.

2. Grounds on the face of the application are that **Erishifa Wanjiru Kihika** a beneficiary and a daughter to the **1st** Administrator being the **3rd** born daughter of the deceased and the **1st** administrator **Margaret Wambui Kihika** her mother and that her mother is advanced in age with health challenges and that the house of the **1st** administrator has deliberated and agreed that she be a suitable replacement of her mother to ensure all their interests are well represented.

3. Advocates for beneficiary **Peris Njoki** and **3th** and **4th** administrators stated that they are not opposed to the application. Counsel for the **3rd** and **4th** administrators submitted that it was for the advocate for the **1st** administrator to put his house in order. On the other hand, the **2nd** administrator **Alice Mukuhi Kihika** and beneficiary **Florence Nduta Kihika** who is the daughter of **1st** administrator opposed the application.

4. The **2nd** Administrator **Alice Mukuhi Kihika** filed replying affidavit dated **5th** of December 2019 opposing the substitution of **Margaret Wambui Kihika** with **Erishifa Wanjiru Kihika**. The Advocate submitted that they are opposed to replacement with the specific beneficiary because she resides in the United States of America (USA).

5. In respect to opposition by **Florence Nduta Kihika**, counsel submitted that the reason for opposition the application is that, his client who is a daughter of the **1st** Administrator and also a beneficiary was not informed when the application was done and has not given consent to the same. He further submitted that as averred by his client, the beneficiary **Erishifa Wanjiru Kihika** proposed to act as administrator in place of **1st** administrator resides in the USA while his client resides in Kenya and therefore the most suitable beneficiary to substitute the **1st** administrator for the effective administration of the estate of the deceased. He submitted that the distance will pose a great challenge in administering the estate of the deceased;

6. Florence Nduta averred that the assertion of all the beneficiaries having consented to the substitution is a falsehood, only 7 out of 47 beneficiaries have signed the consent. She further averred that the applicant has filed an appeal dated **17th** April 2019 towards an application dated **24th** January 2019; the application for substitution which was dismissed by **Justice Ndungu** and the appeal is pending a ruling and prays that the appeal is decided first before any other orders are made by this Court.

7. When the parties appeared before me on the **28th** day of October 2020, I advised the beneficiaries to have a discussion and have a suitable replacement of first administrator **Margaret Wambui Kihika** but on **19th** November, 2020 the parties had not reached a consent on the

suitable person to substitute her and urged Court to make a ruling on the issue.

ANALYSIS AND DETERMINATION

8. It is not disputed that there is need to substitute the 1st administrator on reason of old age and ill health. Beneficiary **Peris Njeri Kihika** and the 3th and 4th Administrators are not opposed to the application. The 2nd administrator and beneficiary **Florence Nduta Kihika** opposes the replacement of 1st administrator with **Erishifa Wanjiru** for ground that she resides in USA.

9. Further, **Florence Nduta Kihika** argues that she is the most suitable substitution of 1st administrator as she is a daughter of the 1st administrator and she resides in Kenya.

10. On perusal of this file, I note that the petition was filed in the year 2005 and grant issued on 13th October 2009; it has been pending in Court for a about 16 years now. This matter has remained unresolved for many years and in my view having an administrator who is a resident out of Kenya will delay this matter further. An administrator who can easily be reached by the other parties would be more efficient in playing the role of an administrator.

11. **Florence Nduta** has averred that she is a daughter of the 1st administrator and that she resides in Kenya. No reason have been advanced to suggest that she capable of playing a role of administrator to represent the interests of the children of the first administrator.

12. From the foregoing, I see no merit in the application herein. I decline to substitute the 1st administrator with **Erishifa Wanjiru** but direct that she be substituted with **Florence Nduta Kihika** to enable expeditious disposition of this matter.

13. FINAL ORDERS

1. Prayer to substitute 1st administrator with Erishifa Wanjiru is dismissed.

2. Florence Nduta Kihika to substitute Margaret Wambui Kihika as 1st administrator.

Ruling dated, signed and delivered via zoom at Nakuru This 11th day of February 2021

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RACHEL NGETICH

JUDGE

In the presence of:

Schola/Jeniffer - Court Assistant

Mr.Macharia counsel for 1st Petitioner/Applicant

Mr.Kimathi counsel for beneficiary Florence Nduta Kihika

Ms.Cheron holding brief for Mrs. Ndeda counsel for Beneficiary Peris Njoki Kihika

Ms.Alwala holding brief Mr.Githui counsel for 2nd and 3rd Administrators