



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

CITATION CASE NO. 02 OF 2020

**IN THE MATTER OF THE ESTATE OF ANASTANSIA MURINGI NDUNG’U ALIAS ANASTACIA MURUGI NDUNG’U
ALIAS ANASTANSIA MURINGO NDUNG’U ALSIA ANASTANSIA NDUNG’U (DECEASED)**

CECILIA MUTHONI NDUNG’U.....CITOR

VERSUS

CHARLES MUTAHI NDUNG’U.....1ST CITEE

ELIZABETH WANGUI.....2ND CITEE

-AND-

JOSEPH NDERITU NDUNG’U.....1ST INTERESTED PARTY

ESTHER WANJIKU NDUNG’U.....2ND INTERESTED PARTY

GABRIEL THUMBI NDUNG’U.....3RD INTERESTED PARTY

RULING

1. This is Citation lodged by Celia Muthoni Ndung’u in respect of Estate of Anastansia M. Ndung’u. She is the Citor. She cites Charles Mutahi and Elizabeth Wangui Citees.

2. Thus there are 3 others who have joined as Interested Parties namely:

- i. Joseph Nderitu**
- ii. Esther Wanjiku**
- iii. Gabriel Thumbi**

3. She (Citor) seeks Citees to accept to consent or refuse issuance of letters of Administration or show cause why same should not be granted to Citor.

4. The deceased Anastansia M. Ndung’u is survived by 8 children namely:

- i. Gabriel Thumbi**
- ii. Charles Mutahi**
- iii. Joseph Nderitu**
- iv. Elizabeth Wangui**
- v. Lucy Kagure**

vi. **Lydia Wambui**

vii. **Esther Wanjiku**

viii. **Cecilia Muthoni**

5. The core issue in the matter is who is to be appointed as the Administrator (s) of the Estate of the deceased herein.

6. The Citation is supported by affidavit of Cecilia Muthoni Citor sworn on 06/08/2020 paragraph 5 of the affidavit above states that 5 of her siblings have consented for her to be the Administrator.

7. She complains that the 1st Citee has been benefiting exclusively from a hotel in Nanyuki Municipality which is part of the deceased's Estate and that he is not keen to have Administration and distribution of the instant estate by the court.

8. 1st Citee objection to Citation is based on the fact that Citor and some of the family members are based abroad thus cannot administer from their locus in quo outside the Country. He prefers himself and second Citee to be the Administrators.

9. This is supported by 2nd Citee on the same grounds. She (2nd Citee) proposes herself and 3 other siblings to be appointed Administrators.

10. In supplementary affidavit sworn by Citor on 06/11/2020 she proposes the following siblings to be appointed as Administrators whom she can work with: **Gabriel Thumbi, Joseph Nderitu and Dr. Esther Wanjiku** to the exclusion of the Citees.

11. In another affidavit sworn by Esther Wanjiku on 08/06/2021 an Interested Party along with Esther Nderitu and Gabriel Thumbi she joins Citor in seeking to be appointed as Administrators.

12. In reply to supplementary affidavit sworn by Citor aforesaid, 1st Citee Charles Mutahi swore affidavit on 22/12/2020 opposes vehemently the appointment of Gabriel Thumbi from being among the Administrator on grounds including: -

- ***He owes estate over Kshs.1million***
- ***Intermeddled with estate***
- ***Evicted Step-mother from a property she was conducting crushing business***
- ***Forceful dictates what sisters and step-mother should get from estate***
- ***He is violent e.t.c.***

13. Under **Section 66 of Succession Act of Cap. 160 Laws of Succession Act, Laws of Kenya**. The children in absence rank equally in administration of the estate.

14. Thus all the 6 children of Anastansia M. Ndung'u deceased rank equally.

15. However, there is accusation and counter accusation and bad blood on one hand Citor supported by Interested Parties (3 of them) and on the other hand Citees.

16. Generally, the greatest objection by the Citor and her siblings who support her as interested parties, principally is based on the fact that, 1st Citee being appointed as Administrator of estate is that he has been solely benefiting from one of estate property namely Hotel in Nanyuki.

17. On the other hand, the Citee oppose Cecilia Citor from being Administrator as she lives abroad and allegedly arrogant and abusive. They (Citees) oppose Gabriel Thumbi from being the Administrator as he allegedly assumes he is the father of the entire family, forcefully and dictates things and acts as a lone ranger, and above all he is violent inter alia.

18. The law is set out under **Section 66 of Cap. 160 Laws of Succession Act, Laws of Kenya** the surviving spouse/s ranks first in priority of administration of estate of her/their deceased husband and the children second and equally. Thus the only issue is who is to apply for letters of administration?

19. Since the deceased died intestate after the Law of Succession Act had come into force representation to his estate is, therefore, subject to administration in accordance with the provisions of the Act. The persons who qualify to apply for administration in intestacy are set out in section 66, which gives an order of priority to guide the court in exercising discretion in the matter of appointment of administrators. The provision states as follows:

“66. 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: Provided that, where there is partial intestacy, letters of administration in respect.”

20. According to that provision, the court should be guided by Part V of the Act, which sets out the order of priority in entitlement to a share in the estate of the deceased. Priority is given to the surviving spouse, followed by the children of the deceased, followed by parents of the deceased in the event that the deceased was not survived by a spouse or child, other relatives follow thereafter.

21. The same applies with regard to entitlement to administration by dint of section 66. The surviving spouse has priority to administration, followed by the children, parents of the deceased, siblings, other relatives to the sixth degree, the Public Trustee and creditors in that order. When I apply those provisions to the instant case, it would follow that all the children of the deceased, have priority to appointment the citor/applicant included however some are strongly objected to by others.

22. That being so, the court is mandated to step in and appoint the Administrator to unlock the process of the P&A Matter.

23. Thus I find the people with a little bit of sobriety are:

i. Elizabeth Wangui Gachwiri

ii. Joseph Nderitu Ndung’u

iii. Dr. Esther Wanjiku Ndung’u

24. Thus, unless there is very strong valid reason of the appointment of i or ii or iii of the above, above, I will appoint them as persons to institute succession cause and thereafter be appointed administrators thereof.

25. Alternative, if there is unanimous consent to the contrary, I will affirm aforesaid appointment.

26. Thus the orders subject to aforesaid:

a) The following will lodge a P&A Cause within 30 days from date herein namely: -

i. Elizabeth Wangui Ndung’u

ii. Joseph Nderitu Ndung’u

iii. Dr. Esther Wanjiku Ndung’u

b) The same cause and this matter will be mentioned a week after 30 days’ lapse.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 21ST DAY OF OCTOBER, 2021.

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CHARLES KARIUKI

JUDGE