



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

CITATION CASE NO. 03 OF 2020

IN THE MATTER OF THE ESTATE OF SIMON NDUNG’U THUMBI (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. The Citor Cecilia Muthoni lodged citation against Charles Mutahi and Elizabeth Wangui Citees seeking the court to direct them to accept to consent or refuse issuance of letters of Administration of estate herein or show cause why the same letters of Administration should not be granted to the said Cecilia Muthoni Citor.

2. The citation is supported by the affidavit of Citor sworn on 06/08/2020. The deceased herein died on 10/09/2006 and is survived.

3. Anastansia M. Ndung’u (deceased) 8 children namely:

- i. Gabriel Thumbi**
- ii. Charles Mutahi**
- iii. Joseph Nderitu**
- iv. Elizabeth Wangui**
- v. Cecilia Muthoni**
- vi. Lucy Kagure**
- vii. Lydia Wambui**
- viii. Esther Wanjiku**

4. The Citor states that P&A proceedings have not been lodged due to disagreement of all the survivors of the deceased.

5. The claims that 5 of her siblings support that she becomes the Administrator but the Citees oppose same. Thus declined to sign the

consent. She accuses the 1st Citee Charles Mutahi of benefiting solely from a Hotel in Nanyuki Municipality which is part of the Estate.

6. In a replying affidavit sworn on 21/09/2020 by Charles Mutahi 1st Citee, opposes appointment of Citor as Administrator as she resides in USA outside the Country. He seeks that him and 2nd Citee to be appointed Administrators.

7. In a reply affidavit sworn on 22/09/2020 Elizabeth Wangui 2nd Citee seeks herself and 3 other siblings to be appointed as the Administrators.

8. In her supplementary affidavit sworn on 16/11/2020, Citor urges court to appoint her along with Gabriel Thumbi, Joseph Nderitu and Dr. Esther Wanjiku as Administrators to the exclusion of the Citees.

9. The aforesaid suggestion attracted vehement objection by Charles Mutahi Citee No. 1 to also Gabriel Thumbi 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.***

10. Esther Wanjiku has also put an affidavit sworn on 08/06/2021 in support of Citor on appointment of the proposed siblings as contained in supplementary affidavit of Cecilia Citor above alluded to.

11. 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. The only issue is who is to apply for letters of administration?

12. 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.”

13. 20. According to that provision, the court should to 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.

14. 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.

15. In the instant matter there is one house disclosed of the deceased, and taking to account to the objections raised, I will appoint the persons less objected to representing the other siblings to lodge P&A Matter and eventually be appointed Administrators of Estate, these are:

- i. Joseph Nderitu Ndung’u**
- ii. Elizabeth Wangui Gachwiri**
- iii. Dr. Esther Wanjiku Ndung’u**

16. **The same shall file the P&A Matter within 30 days and then matter be mentioned a week after 30 days’ lapse from dates herein**

for directions.

17. The court has given a window for a consent by all survivors of the two houses within a maximum of 7 days and in default my orders obtains in terms of para 13 and 14 above.

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

.....

CHARLES KARIUKI

JUDGE