

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

MISC. SUCCESSION CAUSE NO. 18 OF 2011

IN THE MATTER OF THE ESTATE OF DANIEL NG'ANG'A THAGICHU (DECEASED)

CATHELENE WANJIKU NG'ANG'A.....APPLICANT

VERSES

JOSEPH KINGOI NG'ANG'A.....RESPONDENT

RULING

1. This dispute relates to the estate of the deceased Daniel Ng'ang'a Thagichu who died on 26th February 2006 at Kiambu Hospital. He had a share in Githunguri/Ikinu/2067 and in Githunguri/ Riuki/445. He was married to two wives, Elizabeth Wanjiku Ng'ang'a and the objector Ronnah Wairimu Ng'ang'a. Elizabeth Wanjiku Ng'ang'a had one child, Joseph Kingoi Ng'ang'a (the respondent), with the deceased. Ronnah Wairimu Ng'ang'a had four children: Phylis Njeri Ng'ang'a, Nancy Mukuhi Ng'ang'a, Diana Wairimu Mumbi and Cathlene Wanjiku Ng'ang'a (the applicant). The respondent has stated that none of the children of Ronnah Wairimu Ng'ang'a was sired by the deceased. The applicant's case is that her and her siblings are children of the deceased. Elizabeth Wanjiku Ng'ang'a died on 25th August 2016.

2. Ronnah Wairimu Ng'ang'a petitioned Kiambu Senior Principal Magistrate's Court in **Succession Cause No. 139 of 2009** seeking the grant of letters of administration intestate. The respondent, on his part, filed in the same court **Cause No. 130 of 2009** a petition for grant in respect of the estate of the deceased. The two causes were consolidated and transferred to this court for disposal. An issue was raised by the respondent whether or not the deceased had left a Will. The court sought to determine the issue. Ronnah Wairimu Ng'ang'a became the objector. The applicant and one witness testified. Ronnah Wairimu Ng'ang'a died on 25th August 2016 before she had testified.

3. The applicant obtained a grant of letters of administration *ad litem* to enable her take up the position of Ronnah Wairimu Ng'ang'a in these proceedings as the objector. She seeks to substitute her late mother to be able to proceed with this cause.

4. The respondent is opposing the application on the basis that none of the children of Ronnah Wairimu Ng'ang'a was sired by the deceased, or adopted by him, and, therefore, that the applicant will not benefit from the estate and cannot substitute her late mother.

5. The grant issued to the applicant gave her capacity to sue and be sued on behalf of her late mother, and therefore her application cannot be competently challenged (**Trouistik Union International & Another –v- Mbeyu & Another [2008]IKLR (G & F) 730**).

6. The issue whether the applicant, or any of her siblings, was a child of the deceased, and therefore beneficiary, will be determined at the point of the application for the confirmation of the grant.

7. I allow the application dated 19th February 2019. The applicant shall substitute Ronnah Wairimu Ng'ang'a as the objector.

8. Costs shall be in the cause.

DATED and DELIVERED at NAIROBI this 26TH day of FEBRUARY 2020

A.O. MUCHELULE

JUDGE