



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

SUCCESSION CAUSE NO. 3 OF 2017

IN THE MATTER OF THE ESTATE OF JOSEPH NDERITU KINGORI (DECEASED)

MARIANA NJERI GATHENYA.....PETITIONER

CONSOLIDATED WITH

SUCCESSION CAUSE NO. 4 OF 2017

IN THE MATTER OF THE ESTATE OF JOSEPH NDERITU KINGORI (DECEASED)

GEORGE NDUNGU KIMANI.....EXECUTOR

AND

MARIANA NJERI GATHENYA.....OBJECTOR

JANE WANGARI NDERITU.....BENEFICIARY/INTERESTED PARTY

SUO MOTU PARTIAL RULING AND DIRECTIONS

1. Following a *viva voce* hearing for purposes of proof of the contested validity of the Will of the deceased dated 6th March, 2008 in this matter, the Court makes the following observation and issues the following directions.

2. Observations:

a) By an application dated 13th March, 2019, and certified urgent, the Executor, G. N. Kimani applied for monies from the (testate) estate for purposes of appointing counsel to represent the estate and for facilitating witnesses on behalf of the estate in the proceedings.

b) The aforesaid application specifically sought the said funds to “*facilitate proof of the Will by witnesses*” (Prayer 1); and to engage “*an advocate for the estate of the deceased to guide and facilitate witnesses to the Will, lodging of documents in court.*” (Prayer 2).

c) The aforesaid application was granted by the Court and orders issued permitting withdrawal of Kshs 100,000/= for appointment of legal counsel and representation costs, and Kshs 150,000/= for witness facilitation costs. The court orders were issued on 13th March, 2019.

d) An advocate, Mr. D. Wairegi, was subsequently appointed by the estate and filed his notice of appointment on 23rd May, 2019. He subsequently represented the estate at the hearing.

e) The following witnesses were availed at the hearing:

1) Dr. Okonji vide an affidavit deposited on 9th April, 2019; who testified.

2) G. Kimani, Executor, vide an Affidavit deposited on 29th April, 2019; who testified.

3) Mary N. Mburu vide an affidavit deposited on 20th May, 2019; who was not called to testify at the hearing.

f) During the hearing, the Executor testified that:

- 1) The Will was witnessed by two people, John M. Mwangi, ID No.[....] and Kariuki Gicheru ID No. [....] and witnessed by Mary Njeri Mburu Advocate.
- 2) The Witnesses to the Will had not recorded statements but that *“if the Court wants them they can be availed..... these people exist.”*

In cross-examination by Mr. Ngunjiri, he stated that:

“My file notes show the two witnesses were in my office.”

3. The proof of the Will includes satisfying the Court, in terms of **Section 11 (c)** of the **Law of Succession Act**, inter alia, as to its legal formalities including the due execution of the Will pursuant to **Rule 54** of the **Probate and Administration Rules**.

4. In light of the foregoing, Directions are hereby issued as follows:

- a) Mary Njeri Mburu Advocate, whose affidavit was filed herein, shall appear in court to give testimony and be cross-examined thereon.
- b) The witnesses who attested the deceased’s Will, and who the Executor stated he can avail, shall file affidavits concerning their role in the attestation of the said Will and shall be availed for testimony and be cross-examined.
- c) The attesting witness’ affidavits shall be filed and served on parties within ten (10) days of the date hereof;
- d) A brief hearing shall be fixed for the examination of the three witnesses on the issue of execution of the Will within thirty (30) days of the date hereof, followed thereby with brief oral submissions immediately after the hearing.

Administrative directions

5. Due to the current inhibitions on movement nationally, and in keeping with social distancing requirements decreed by the state due to the Corona-virus pandemic, this Judgment has been rendered through Teams tele-conference with the consent of the parties noted hereunder, who were also able to participate in the conference. Accordingly, a signed copy of this judgment shall be scanned and availed to the parties and relevant authorities as evidence of the delivery thereof, with the High Court seal duly affixed thereon by the Executive Officer, Naivasha.

6. A printout of the parties’ written consent to the delivery of this judgment shall be retained as part of the record of the Court.

7. Orders accordingly.

Dated and Delivered in Naivasha by teleconference this 12th Day of November, 2020.

R. MWONGO

JUDGE

Attendance list at video/teleconference:

1. Mr. Waigwa Ngunjiri for the Objector
2. Ms Koki Mbulu for the Interested Party
3. Mr. Wairegi Kiarie for the Executor
4. Court Clerk - Quinter Ogutu