



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

(FAMILY DIVISION)

SUCCESSION CAUSE NO 3012 OF 2012

IN THE MATTER OF THE ESTATE OF GEORGE KIMANI GATURU ALIAS KIMANI GATURU

(DECEASED)

ALICE NJERI NJOROGE

ESTHER WANJIRU KIMANI

HANNAH WANJIKU NJOROGE.....PETITIONERS

VERSUS

JOYCE WANGARI NJENGA

LUCY MATARO MWANGI.....OBJECTORS

RULING

1. The deceased **George Kimani Gaturu** died intestate on the 25th of December, 2006 and left behind his widow **Beatrice Wambui Kimani**, 2 sons; **Amos Ndung'u Kimani** and **James Wamwenja Kimani**, and 5 daughters; **Joyce Wangari Njenga**, **Esther Wanjiru Kimani**, **Lucy Wataro Mwangi**, **Alice Njeri Njoroge** and **Hannah Wanjiku Njoroge**.

2. An issue arose within the family; as non-had moved to obtain a grant of representation, when two daughters; **Joyce Wangari Njenga** and **Lucy Wataro Mwangi** moved the court by way of a citation, citing their mother **Beatrice Wambui Kimani**, and two brothers; **Amos Ndung'u Kimani** and **James Wamwenja Kimani**. The above citation was compromised when the citees Petitioned for a grant in this cause following a consent order which was entered into by the parties giving the citees a time line within which to take action failure of which the citors would have the liberty to petition. Due to lack of communication, the citors unaware of this cause filed yet another Succession Cause No. 274 of 2014. The said cause was later consolidated with the current one. The citors now Objectors filed an objection to the making of the grant, on the 15th of November 2017 and a Cross Petition on the 7th of December, 2017.

3. The widow having passed away, the estate was left with two Petitioners and though, the 2nd and 3rd Petitioners were represented they did not react to the objection and Cross Petition and notable is their frequent absence from court including at the hearing.

4. The matter proceeded by way of viva voce evidence where both of Objectors gave evidence. The objection was mainly based an allegation that the two Petitioners had made it clear that their sisters would not inherit the estate of their late father, as according to them women do not inherit. The Objectors urged the court to assist them in ensuring that they too inherit their father.

A proposal was made to have Amos and Lucy as a co-administrator. James was accused of having sold shares that belong to the estate and making his threat real by chasing away from their mother's home one of sisters.

5. I have considered the application before court, the evidence adduced and the history surrounding the case.

6. As it is, the application and evidence before court remains uncontroverted. Notable is that the Petitioners and Objectors are children of the same father and mother. The bone of contention is based on a biological factor; the rival parties happen to be of different genders. The brothers have threatened to disinherit their sisters thus creating fear and apprehension in the Objectors. The fear cannot be wished away as already there is evidence that the last-born daughter of the deceased was chased away from home by one of the Petitioners.

7. Without seeming to judge the Petitioners, it is not lost to court that historically girls were disinherited in many of our communities, a practice which has not been completely eradicated despite having a very progressive Constitution and good laws in place, as there are pockets of people amongst us who remained glued to some out-dated and retrogressive customs of the old which have no place in this century.

8. Against the above background, the Court finds the objection justifiable. The Objectors have proved on balance of probabilities the likelihood of being left out. Further their proposal to have 2 administrators of either gender to avert a situation where they get disinherited is most reasonable.

9. Consequently, the Court makes the following orders;-

- a. **Amos Ndung'u Kimani and Lucy Wataro Mwangi be and are hereby appointed as administrators.**
- b. **The Deputy Registrar do cause the gazettelement of the said appointment forthwith.**
- c. **This being a family matter each of the parties will bear their costs.**

Dated and Delivered in Nairobi on this 21st day of February, 2019

.....

ALI-ARONI

JUDGE