



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI (FAMILY DIVISION)**

**SUCCESSION CAUSE NO 1002 OF 2016**

**IN THE MATTER OF THE ESTATE TIMOTHY GITHUA KARIUKI (DECEASED)**

**NAIROBI WOMEN HOSPITAL.....APPLICANT**

**VERSUS**

**DANIEL KARIUKI.....1<sup>ST</sup> RESPONENT**

**RAYMOND N. GITHUA.....2<sup>ND</sup> RESPONDENT**

**HUDSON GITHUA.....3<sup>RD</sup> RESPONDENT**

**CAROLINE NJERI KARIUKI.....4<sup>TH</sup> RESPONDENT**

**EUNICE WAIRIMU.....5<sup>TH</sup> RESPONDENT**

**TIMOTHY G. NYOKABI.....6<sup>TH</sup> RESPONDENT**

**AND**

**JAMES MWANGI KABUGI.....1<sup>ST</sup> INTERESTED PARTY**

**OLIVE JOYCARE LIMITED.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

1. The deceased in this matter one **Timothy Githua Kariuki** died intestate on the 27<sup>th</sup> of January 1999 at the PCEA Kikuyu Hospital. He left behind a widow and several adult children & grandchildren surviving him as herein enumerated; -

- a. **Christina Wanjiku Timothy Githua** Widow
- b. **Eunice Wairimu Mwangi** Daughter
- c. **Daniel Kariuki Githua** Son
- d. **Raymond Ngugi Githua** Son
- e. **Caroline Njeri Githua** Daughter
- f. **Hudson Gicheru Githua** Son

Two of his children not named predeceased him and left two sons namely;

- a. **Timothy Githua Wambui** &
- b. **Timothy Githua Nyokabi.**

2. His wife **Christina Wanjiku Timothy Githua** Petitioned for letters of administration on the 15<sup>th</sup> of June 2016. A companying the application was only one consent that of **Raymond Ngugi Githua** which fact stalled the process. The Court communicated to the widow at her known address on the 17<sup>th</sup> of June 2016 asking for proof of assets and consent of all other beneficiaries. The widow did not react to the communication. From the notes on the file, it appears that there was another attempt at obtaining the letters on the 16<sup>th</sup> of May 2018, the request was declined by the Deputy Registrar on 16<sup>th</sup> August 2018 for the same reasons.

3. Information before Court is that two months after filing of the Petition, the widow was hospitalised and remains in hospital ever since.

Before court are two applications. The 1<sup>st</sup> by the Applicant Hospital (1<sup>st</sup> Application) seeking for appointment of an administrator in this matter to pave way for payment of a hospital bill owed by the widow. The 2<sup>nd</sup> Application (2<sup>nd</sup> Application) is by the 4<sup>th</sup> Respondent. It contains the prayers sought for by the hospital and goes further to seek for preservation of the estate and for provision for the widow who remains detained at the hospital and whose house was allegedly rented out by the 2<sup>nd</sup> Respondent.

4. The 1<sup>st</sup> application was supported by inter alia the affidavit of the 4<sup>th</sup> respondent. A response to the same was also filed by the 2<sup>nd</sup> respondent on behalf of the other 3 Respondents. The 1<sup>st</sup> interested party also reacted to the same.

5. Having considered the applications, the responses filed, submissions and having engaged some of the parties, this is not your ordinary succession cause where beneficiaries are simply haggling over who among them is to be appointed as administrator(s). The applicant hospital sought for the appointment of administrators in place of the widow, the 2<sup>nd</sup> Respondent is a self-proclaimed administrator who purports to have been given authority to manage the estate by the widow, who lies helplessly in hospital in a pathetic state, having been neglected by none other than those closest to her; her own flesh and blood; her children. She has been detained due to a humongous bill, running to the tune of over 9 million by December last. The estate is wasting away, in the meanwhile, in the hands of the 2<sup>nd</sup> Respondent and the Interested Parties, not a beneficiary. The situation is hopeless.

6. No names have been floated for the intended administrator(s). The impression created by the action and/ or omission of the beneficiaries towards the widow; their mother is undoubtedly worrisome. The 2<sup>nd</sup> Respondent and the interested parties are eyeing another loan advance to cater for they say, outstanding bills, maintenance and upkeep of the widow etc. This will be the duty of the administrator(s), subject to consent of all beneficiaries and of course with the approval of court pending distribution and confirmation of the grant.

7. **Under Section 47** of the Law of Succession Act (the Act) this court has the powers to entertain any application brought before it and to pronounce any decree that is expedient in the circumstances.

**Under Section 70** of the Act whether or not there is a dispute as to the grant the court is empowered before making a grant of representation-

to examine any applicant on oath, to call for further evidence as regards rights of dependants and persons claiming interest or any other matter that appears to require further investigation.

**Section 66** of the Act on its part provides that the court shall have the final discretion as to the person or persons to whom a grant shall issue and without prejudice the court may consider the spouse with association of beneficiaries, beneficiaries based on their beneficial interest, public trustee and creditors in that order.

8. The Act as demonstrated above donates wide discretion to the court. It is expected of course that the discretion will be exercised judicially and to the benefit of all concerned.

9. This court in the circumstances of this case, will make preliminary orders that will allow it arrive at a final determination of the issues at hand. The information before court has left grey areas that need to be fully explained for the court to be clothed with adequate and necessary information to determine the issues at hand.

10. Consequently, the court orders and directs that; -

**a. Statements and /or profiles of all the beneficiaries (children of the deceased) including their occupation, status and any other relevant information be filed within the next seven (7) days of the date hereof.**

**b. The 2<sup>nd</sup> Respondent do avail all original title documents for Dagoretti/Riruta/1977**

**Dagoretti/Riruta/1085**

**Dagoretti/Riruta/1086 &**

**c. Documents in support of the loans with Faulu Kenya & Olive joy care Sacco.**

**d. All supporting documents of bills incurred by the estate in the last 3 months**

**e. Current medical opinion on the health status of the widow which should include her mental status be made available by the hospital.**

All the above be filed within the next seven (7) days of the date hereof. The Original title documents be availed at the next hearing.

11. The beneficiaries do appear in court at the next hearing for examination by the court under Section 70 of the Act for purposes of considering the issue of administration

**DATED and Delivered in Nairobi this 21<sup>st</sup> day of February 2019**

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**ALI-ARONI**

**JUDGE.**

**In the presence of; -**

Counsel for the Applicant Hospital.....

Counsel for 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> 5<sup>th</sup> & 6<sup>th</sup> Respondents.....

Counsel for the 4<sup>th</sup> Respondent.....

Interested Parties.....