



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 52 OF 2015**  
**IN THE MATTER OF THE ESTATE OF**  
**GEOFFREY KAMAU GITUERE - (DECEASED)**

PAULINE WAMBUI KAMAU.....1<sup>ST</sup> APPLICANT

A W K.....2<sup>ND</sup> APPLICANT

IRENE WANJIRU KAMAU.....3<sup>RD</sup> APPLICANT

DAVID GITUERE KAMAU.....4<sup>TH</sup> APPLICANT

**VERSUS**

LUCY WANJUHI KAMAU.....1<sup>ST</sup> RESPONDENT

FRANCIS NGUGI KAMAU.....2<sup>ND</sup> RESPONDENT

**RULING**

1. It is not in dispute that the deceased Geoffrey Kamau Giturere died on 26<sup>th</sup> November 2014. He had two wives: Mary Wakonyo (deceased) and 1<sup>st</sup> respondent Lucy Wanjuhi Kamau. The children of Mary Wakonyo are Olive Wambui, Lucy Wanjuhi Kamau (1<sup>st</sup> respondent), Leah Wangari, Marion Wanjiku Giturere and Anthony Giturere Kamau. The children of Lucy Wanjuhi Kamau are Rose Phylis Nyambura Kamau, 2<sup>nd</sup> respondent Francis Ngugi Kamau, Pauline Wambui Kamau (1<sup>st</sup> applicant), A W K (2<sup>nd</sup> applicant), Irene Wairimu Kamau (3<sup>rd</sup> applicant), David Giturere Kamau (3<sup>rd</sup> applicant) and D N K.

2. On 14<sup>th</sup> January 2005 the respondents petitioned this court for the grant of letters of administration. They indicated that the deceased had died intestate, leaving the following properties:-

- a) Muguga/Muguga/[particulars with held];
- b) Sigona/[particulars with held];
- c) Plot No. [particulars with held]/7 Kikuyu Township;
- d) Datsun KVVW/[particulars with held];
- e) Savings at Equity Bank Kikuyu Branch A/C No. [particulars withheld];
- f) Cooperative Bank Kikuyu Branch A/C No. [particulars withheld];
- g) Kenya Commercial Bank Kikuyu Branch A/C No. [particulars withheld];

h) Barclays Bank, Limuru Branch A/C No. [particulars with held]; and

i) Honda CRV KCA [particulars with held].

3. On 17<sup>th</sup> December 2015 a grant of letters of administration intestate was issued to the respondents.

4. On 11<sup>th</sup> May 2016 the applicants along with A W K filed answer to the petition through their document dated 6<sup>th</sup> May 2016. They sought the dismissal of the petition on the grounds that their written consent had not been obtained before the petition was filed and yet they were beneficiaries to the estate of the deceased; that the deceased had not died intestate but had left a valid Will (copy of which was attached); that the respondents had taken over the control of the estate and were collecting rent without providing for them; that the rental income was collateral to a loan in favour of Equity Bank and which loan was not being serviced; and that, in view of the Will, the entire proceedings were a nullity. They asked that the rental income be deposited into court.

5. On 16<sup>th</sup> June 2017 the respondents filed a replying affidavit sworn on 14<sup>th</sup> June 2017 in answer to the objection to the petition. Their case was that when the petition was filed two of the children of the deceased (these were D N K and A W K) were minors who could not provide written consent, and some of the children of the deceased refused to provide consent. They (the respondents) challenged the Will made reference to by the applicants, saying that the deceased did not leave a written Will; that, in fact, the purported Will was a forgery. They stated that the loan was being serviced, and/or arrangements had been made for its being serviced.

6. The applicants were represented by Mr. Orengo and the respondents by Mr. Macharia. They filed written submissions which I have considered.

7. It is clear to me that the dispute herein can only be determined after the issue whether or not the deceased left a valid written Will has been settled. This is because, if the deceased left a written Will then these intestate proceedings would be incompetent. It would mean that the executors of the Will would be the only ones competently required to petition for the grant of probate. If the deceased left a Will the grant issued herein would have to be revoked.

8. The direction of the court is that the proceedings be set down for the oral hearing on the issue whether or not the deceased left a written Will. In the meantime, the estate will be preserved in the sense that none of the properties constituting it shall be sold or transferred. Within 30 days from today, the respondents shall provide an accurate inventory of their dealings with the estate. Specifically, they will indicate how much money has been realised from the rents since they got letters of administration, how much has been applied to service the loan, what is outstanding in respect of the loan, and so on.

9. The issue regarding the proof of the Will shall be heard on 2<sup>nd</sup> May 2018. The applicants shall be the first to call evidence.

**DATED and SIGNED at NAIROBI this 6<sup>TH</sup> day of MARCH 2018.**

**A.O. MUCHELULE**

**JUDGE**

**DATED and DELIVERED at NAIROBI this 8<sup>TH</sup> day of MARCH 2018.**

**R.E. OUGO**

**JUDGE**