



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NANYUKI

SUCCESSION CAUSE NO.15 OF 2016

ESTATE OF ISAAC KINGAKITONGA.....DECEASED

And

LUCY NYARUAIGICHUKI.....PETITIONER

Versus

LEONARD GITONGA KINGA.....PROTESTOR

RULING

1. ISAAC KINGAKITONGA (deceased) died on 15th March 1991.

2. LUCY NYARUAIGICHUKI petitioned on 28th June 2012 for letters of administration intestate in this cause. She petitioned as the widow of the deceased. She deponed in her affidavit that she had the following children with the deceased:

- **Wilfred GichukiKinga;**
- **Henry WokabiKinga;**
- **Hellen ThonjoKinga;**
- **Mercy WanguiKinga;**
- **James MunyiKinga; and**
- **Geoffrey WangombeKinga.**

3. She further deponed that the deceased had another wife, namely phylis Nyathogora, now deceased; with whom they were blessed with children, namely:

- **GathoniKinga;**
- **Daniel Wanjohi Kinga;**
- **Christopher GichuirikiKinga;**
- **Mercy MukamiKinga;**
- **Susan MurugiKinga;**
- **WambuiKinga (deceased) who left behind beneficiaries.**
- **Francis Macharia Kinga (deceased) who left behind beneficiaries; and**

- David Makumi (deceased) who left behind beneficiaries.

4. A grant was issued to Lucy NyaruaiGichuki on 14th December, 2012. Lucy's application, by summons, for confirmation of that grant received protest from Leonard Gitonga Kinga. His main objection, in that protest is that Lucy was not a wife of the deceased and that the children she listed, in the petition, are not children of the deceased.

5. On 19th January, 2017 this court directed the protest to be heard by oral evidence.

6. The matter was subsequently listed for hearing severally but the hearings did not proceed. When matter came up for hearing on 8th February, 2018 only the petitioner's counsel was represent.

7. On that day the court made an order that in view of the delay in concluding this matter the determination of the protest would be made on the affidavit and witness statements on record.

8. As I sat to consider the judgment I noted that Learned Counsel for the protestor was unaware of the hearing date, of 8th February, 2018, and he had not been served with a hearing notice. It is because of that that I determined that it would be contrary to the interests of justice for the court to proceed and make a final determination on the protest, when infact the protestor and his counsel were unaware of the hearing notice.

9. Accordingly at the reading of this Ruling I shall fix an early hearing date.

10. The following are the orders of the court:

(a) The protest of Leonard Gitonga Kinga shall be heard by viva voce and affidavit evidence on a date to be fixed by the court;

(b) At such hearing the court shall determine the following issues:

(i) Was Lucy NyaruaiGichuki wife of Isaac KingaKitonga deceased;

(ii) If (i) is in the affirmative who are the children of that marriage;

(iii) Which are the assets of the Estate of Isaac KingaKitonga; and

(iv) How those assets should be divided amongst the beneficiaries.

Dated and Delivered at Nanyuki this 19th April, 2018

MARY KASANGO

Judge

Coram

Before Justice Mary Kasango

Court Assistant: Njue/Maria Stella

Petitioner

Protestor

For petitioner

For Protestor

COURT

Ruling delivered in open court

MARY KASANGO

JUDGE