



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 846 OF 2015**  
**IN THE MATTER OF THE ESTATE OF THUKU NG'ANG'A (DECEASED)**  
**PHYLLIS MAGIRE KARIUKI.....PROTESTOR**  
  
**VERSUS**  
  
**KAMAU THUKU.....1<sup>ST</sup> RESPONDENT**  
**MWANGI THUKU.....2<sup>ND</sup> RESPONDENT**  
  
**RULING**

1. The deceased died on 31<sup>st</sup> August 2010 at the Kenyatta National Hospital. On 10<sup>th</sup> April 2015 his two sons Kamau Thuku and Mwangi Thuku petitioned this court for the grant of letters of administration intestate. The grant was issued to them on 16<sup>th</sup> June 2016. On 22<sup>nd</sup> December 2016 Phyllis Magire Kariuki filed an affidavit of protest to the grant. Her case was that she was the widow of the late son of the deceased called Joseph Njuguna Thuku who left the following children:-

- (a) Dianah Wangari Njuguna;
- (b) Daniel Mburu Njuguna;
- (c) Samwel Thuku Njuguna;
- (d) Hannah Wanjiru Njuguna; and
- (e) Faith Wairimu Njuguna.

She complained that the petitioners had fraudulently failed to disclose in their petition that the deceased had a son (Joseph Njuguna Thuku) who had pre-deceased him and who had left a family which was entitled to benefit from the estate. She stated that in the chief's letter dated 29<sup>th</sup> August 2014 to accompany the petition all the deceased's beneficiaries had been named, but that the petitioners had excluded some of them in the petition and in the affidavit in support of the petition. She swore that if the protest is not upheld she will be disinherited.

2. The petitioners filed a response to the affidavit of protest. They stated that the protest was brought late,

having been filed six months after the grant had been issued. They acknowledged that the deceased had a son Joseph Njuguna Thuku who had pre-deceased him and whom they had not mentioned in their affidavit in support of the petition for grant. They indicated that their late brother had only one son with the protester whose name was Samuel Thuku Njuguna whom the deceased had given a parcel of land, Plot No. 121 situate at Gilgil town in an agreement dated 24<sup>th</sup> March 2011. They agreed that they had failed to name another late brother Stephen Ng'ang'a Thuku who had children but said they were going to provide for the children. Further, they said they intended to provide for the son of the protester. They denied, however, that the protestor was entitled to administer the estate of the deceased.

3. This is not an application for revocation of the grant that was issued to the petitioners. The protest was filed after the grant had been issued. The grant has not been confirmed.

4. It is clear that in the affidavit sworn to support the petition for grant the petitioners did not include all the beneficiaries of the estate of the deceased. They excluded the families of their two late brothers, Stephen Ng'ang'a Thuku and Joseph Njuguna Thuku. They were legally supposed to seek the consent of these families when petitioning for the grant.

5. The petitioners state that their late brother had only one child with the protester. The protestor named more children. This is a dispute that will be dealt with at confirmation.

6. There is no dispute that, in terms of priority, the petitioners were entitled to apply for the grant.

7. So that the petitioners do not continue with the exclusion tactics, and noting that a grant on its own does not mean that now they have been given the entire estate to the exclusion of the rest of the family, I direct that within 60 days from today the petitioners shall file an application to confirm the grant, and in the application they will indicate all the beneficiaries of the estate of the deceased, the properties contained in the estate, and their proposed distribution of the estate. They will serve the application on the protester and the widow and/or the children of the late Stephen Ng'ang'a Thuku who shall have 30 days to respond to the application. Thereafter the parties shall cause the matter to be mentioned for directions.

8. To that extent, therefore, the affidavit of protest is sustained.

**DATED and DELIVERED at NAIROBI this 24<sup>TH</sup> day of MAY, 2017**

**A.O. MUCHELULE**

**JUDGE**