



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

SUCCESSION CAUSE NO. 1 OF 2017

IN THE MATTER OF THE ESTATE OF ROSE NDUTA MUNGAI- (DECEASED)

DAVID WAINAINA MUNGIA 1st PETITIONER

STANLEY MBURU MUNGAI 2nd PETITIONER

VERSUS

LYDIA WANJIRU MUNGAIOBJECTOR

JUDGEMENT

1. **ROSE NDUTA MUNGAI** (deceased) (**late Rose**) is the deceased in respect to whom this succession relates. She passed away on 21st January 2016. She had only one son namely Simon Mungai Muriu (**late Simon**) who predeceased the late Rose.

2. It is not contested by parties in this action that the late Simon had one Son namely Garvin Muriu Mungai (**Garvin**). There is some dispute whether the mother of Garvin, namely Lydiah Wanjiru Mungai, was a wife of the late Simon.

3. The late Rose died intestate. Her brothers, namely David Wainaina Mungai (David) and Stanley Mburu Mungai (Stanley) jointly petitioned for grant of letters of administration intestate in respect to the estate of the late Rose. In petitioning they listed the following as the person who were left surviving the late Rose

- **Margaret Muthoni Kariuki - Sister**
- **Hannah Gathoni Njoroge - Sister**
- **David Wainaina Mungai - Brother**
- **Stanley Mburu Mungai - Brother**
- **Catherine Njoki Kimani - Sister**
- **Jane Njambi Murathimi - Sister**
- **Nancy Wanjiku Mungai - Sister**
- **Lydiah Wanjiru Mungai - Daughter in - law**

4. Lydiah filed objection to making grant dated 24th January 2017. That Objection is the subject of this judgment. Lydiah by that objection seeks that the grant be issued to herself, and not David and Stanley. She bases her said prayer on the grounds that the late Rose was her mother in-law. That the late Rose was mother to her husband the late Simon. In turn that the late Simon was father of Garvin her son. That therefore she is the only person entitled to apply for letters of administration.

5. David, in a detailed affidavit, responded to Lydia's objection. His affidavit was sworn on 22nd June 2017. By that affidavit David deponed that the late Rose indicated in all her documents relating to her bank, hospital, Sacco and her employer, National Youth Service, that he David was her next of Kin. He attached various documents which he alleged were signed by the late Rose. David further deponed that Lydia did not relate well with the Late Rose and that Lydia deserted the late Rose in her last days before her death.

ANALYSIS AN DETERMINATION

6. I have considered the affidavit evidence and the written submissions. **Section 66 of the Law of Succession Act CAP 160** gives a court of law the final discretion to determine to whom to grant letters of administration. Section 66 provides:

66. When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interest of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-

- (a) Surviving spouse or spouses, with or without association of other beneficiaries;*
- (b) Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;*
- (c) the Public Trustee; and*
- (d) creditors:*

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.

7. In exercising that discretion donated by **Section 66 of Cap 160** it should be understood by the parties herein that this court has not pre-determined the issues which present themselves in this objection and which, in my view, can only be determined by viva voce evidence.

8. Bearing the above in mind I make the following determination:

- (a) The objection raised by Lydia Wanjiru Mungai is dismissed with no orders as to costs.**
- (b) Once a grant is issued to David Wainaina Mungai and Stanley Mburu Mungai after gazettment the said grant shall with the leave of this court be confirmed before the expiry of 6 months and such confirmation application shall be served upon Lydia Wanjiru Mungai.**
- (c) Lydia Wanjiru Mungai shall then file an affidavit within 21 days of service of the confirmation application signifying her acceptance or rejection of the distribution of the estate set out in the confirmation application.**
- (d) If Lydia Wanjiru Mungai shall reject the distribution of the estate at the hearing of her protest the court shall then determine the amongst other issues raised in the protest the following issues;**
 - (i) Whether Lydia Wanjiru Mungai was wife of the late Simon Mungai Muriu deceased, and**
 - (ii) Whether Rose Nduta Mungai left a will.**
- (e) If Lydia Wanjiru Mungai fails to file an affidavit as set out is (e) above this court shall**

proceed to confirm the grant as prayed subject to the interests of Garvin Muriu Mungai.

Dated and Delivered at Nanyuki this 3rd August 2017

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

Court Assistant: Njue

David Wainaina Mungai: 1st Petitioner

Stanley Mburu Mungai: 2nd Petitioner

For petitioner.....

Lydia Wanjiru Mungai : Objector

Language

COURT

Judgment delivered in open court

MARY KASANGO

JUDGE