



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 1700 OF 1996**  
**and**  
**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 2347 OF 2013**  
**IN THE MATTER OF THE LAW OF SUCCESSION ACT CAP 14**  
**AND IN THE MATTER OF THE ESTATE OF HENRY CLEMENT WARIITHI**  
**R U L I N G**

1. This matter comes before the Court for Hearing of a Summons for Confirmation of Grant of Letters of Administration of the Estate of Henry Clement Wariithi (“the Deceased”). The matter has a complicated history and therefore a Ruling setting out the history will aid further conduct of the Administration of the Estate.

2. The Deceased sadly passed away on 19<sup>th</sup> May 1996. His Widow, Eugenia Wanjiku Wariithi Petitioned for Letters of Administration in **Succession Cause No 1700 of 1996**. She also made other interim applications, including rectification and amendment. The Letters of Administration were issued on 29<sup>th</sup> January 1997. That Grant was confirmed on 7<sup>th</sup> March 1997. The Beneficiaries having consented to the mode of distribution. Thereafter various applications were made for rectification until around May 2000.

3. The Deceased was survived by the following Dependants:

- (1) Eugenia Wanjiku Wariithi – Widow
- (2) Mary Anne Mweru Wariithi – Daughter
- (3) Paul Mutahi Wariithi – Son
- (4) Martha Gichohi Warithi – daughter and
- (5) Mathew Gichohi Wariithi – Son

4. The Administrator, Eugenia Wanjiku also sadly passed away on 24<sup>th</sup> October 2007. Death Certificate No 260717821. The surviving beneficiaries sought to substitute her as an administrator. For reasons that are not entirely clear, rather than file an application for substitution within the same file (**Succession Cause No 1700 of 1996**) they filed a new Petition in an entirely new file namely Succession Cause 2347 of 2013. That Petition sought the appointment of Mathew Gichohi Wariithi the administrator de bonis non, for the purposes of administering that part of the Estate remaining unadministered. The remaining Beneficiaries consented to the Petition. The matter came before Hon Mr Justice Musyoka on 9<sup>th</sup> October 2013. He made an Order consolidating the two files and granting Letters of Administration de bonis non to Mathew Gichohi Wariithi. However when the Letters of Administration were typed up, they were headed “Grant of Letters of Administration Intestate de bonis non” but the test of the Grant referred to “Letters of Administration Intestate of all the estate of **HENRY CLEMENT WARIITHI**. The inconsistency is readily apparent but there does not seem to have been any application for amendment and/or rectification. In the meantime there has been no objection or challenge to the Letters of Administration. That is the document the Applicant now seeks to confirm. Letters of Administration de bonis non by their nature do not require confirmation.

5. There are a number of options available to the Court including starting again. However, the Court is mindful of Articles 159(2) 162 and 165 of the Constitution of Kenya in particular the need to avoid unnecessary delay as well as providing solutions without undue observation of technicalities. However, it is necessary to produce an outcome that is not subject to challenge at every turn. The confirmation of a defective grant could and would give rise to challenge obstructing the efficient management and distribution of the Estate no to mention interminable Court proceedings. No doubt that would be an anathema to the Deceased who was an Advocate himself.

4. In the circumstances and for the reasons set out above the Court makes the following Order:

(1) The Grant of Letters of Administration made to Eugenia Wanjiku Wariithi in Succession Cause 1700 of 1996 be amended to substitute Mathew Gichohi Wariithi as the sole administrator of the Estate. The date of the substitution shall be 9<sup>th</sup> October 2013.

(2) The Certificate of Confirmed grant dated 7<sup>th</sup> March 1997 be amended and/or rectified to substitute Eugenia Wanjiku Wariithi with Mathew Gichohi Wariithi.

(3) Succession Cause 2347 of 2013 be and is hereby closed.

The Court takes the view that such a Certificate will remove any future confusion and/or conflict.

**Order accordingly,**

**FARAH S. M. AMIN**

**JUDGE**

**Dated, Signed and Delivered this 24<sup>th</sup> day of October 2017.**

In the Presence of:

Court Assistant: Patrick Mwangi

Applicant: Mr Nicholas Karanja for the Administrator and Beneficiaries.