

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 2004 OF 2015

IN THE MATTER OF THE ESTATE OF NELSON NGARUIYA NJOROGE (DECEASED)

LUCY WAIRIMU NJENGA.....APPLICANT

VERSUS

JULIET WANGARI GATHAGUOBJECTOR

RULING

1. The deceased Nelson Ngaruiya Njoroge died intestate on 5th July 2015. On 22nd October 2015 the applicant Lucy Wairimu Njenga (widow of deceased) filed this petition seeking the grant of letters of administration intestate. She listed the assets and liabilities of the estate. She named herself, Ruth Elizabeth Wanjiku Ngaruiya (daughter), Nelson Njoroge Ngaruiya (son), Denis Githagu Ngaruiya (son), Natasha Ruth Wanjiku Ngaruiya (daughter) and Emily Njeri Ngaruiya (daughter). The grant has not been issued.

2. The objector Juliet Wangari Gathagu opposed the petition. She swore that she was the only wife of the deceased, the two having been married since 1985 and having got Ruth, Nelson and Denis (the above children). The applicant produced an order to show that the objector and the deceased were divorced. The objector swore that she was not aware of any divorce proceedings or order, and that all that there was were marriage differences between them leading to their separation. There is no dispute that Natasha and Emily (above) are children of the applicant. Her case is that she got them with the deceased who was her husband.

3. The present amended summons seeks that, pending the hearing and determination of this cause Kshs.100,000/= per month be made available to the applicant for the school fees and upkeep of her two children. The requirements of the children were particularised. The money is to come from the deceased's account No. xxxxx at National Bank, Harambee Branch. The objector opposed the application on the basis that there was no grant, what the estate owns or owes has not been verified, and that it has not been demonstrated that the payment of Kshs.100,000/= per month would be sustainable.

4. Counsel for the parties filed written submissions. I have considered the application, rival affidavits and the submissions.

5. There was no evidence tendered to show that the account from which the Kshs.100,000/= has to be withdrawn monthly has the funds to meet the order. It was not shown how much the account holds.

6. Secondly, there is no grant issued. The question as to whom the grant will be issued has to be determined.

7. Lastly, the enduring solution to this dispute would be to appoint the administrators of the estate. Now that it is common ground that the objector had children with the deceased, and the applicant claims to be the second house, as it were, with two children, I order that a joint grant be issued to the applicant Lucy

Wairimu Njenga, Ruth Elizabeth Wanjiku Ngaruiya and Nelson Njoroge Ngaruiya. The grantees, or any of them, shall be at liberty, within 60 days from today, to file and serve application for the confirmation of the grant.

8. Otherwise, the application by the applicant is dismissed.

DATED and DELIVERED at NAIROBI on the 20TH day of NOVEMBER 2017.

A.O. MUCHELULE

JUDGE