



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**SUCCESSION CAUSE NO.499 OF 2015**

**In the Matter of the Estate of Joseph Mwaine M’Ithiru**

**JOUCE KANJA JACOB.....PETITIONER**

**VERSUS**

**JULIUS MUTUMA NTANGI.....OBJECTOR**

**RULING**

**Appointment of administrators**

[1] Parties herein are totally unable to agree on persons to whom letters of administration to the estate of the deceased should be made. I should now exercise my final discretion as to the person or persons to whom a grant of letters of administration shall be made under section 66 of the Law of succession Act. Serious objections herein have been lodged by the Objector JULIUS MUTUMA NTANGI, who is a nephew to the late Joseph Mwaine M’Ithiru. He first filed his protest to confirmation through an affidavit sworn on 9/3/2015. He also filed an application for revocation of the grant of letters of administration made to Joseph Mwaine M’Ithiru on 15/12/2014. He again filed another affidavit of objection to confirmation of grant of letters of administration sworn on 9/1/2016. The matter does not end there. On 21/10/2015, after parties were allowed an opportunity to agree, Mr. Mwirigi, the advocate for the Petitioner informed the court that they had agreed on two things, namely, that (1) the grant of letters of administration made to the Petitioner be revoked; and (2) in lieu thereof a fresh grant of letters of administration intestate be issued jointly to;

- a) Joyce Kanja Jacob**
- b) Jerusha Karimi Kanake and**
- c) Julius Mutuma Ntangi**

The Objector disowned the agreement and objected to the above proposal. The court then directed the Objector to file his proposed administrators of the estate by the next date, i.e. 18/1/2016. The Objector did not adhere to these directions of the court. Instead he filed the affidavit of objection sworn on 9/1/2016. However, on 18/1/2016 the Objector proposed Peter Nyumu to be included as one of the administrators. He said that he was his uncle. Mr. Mwirigi consulted with his clients and he informed the court that his clients objected to inclusion of the said Peter Nyumu as an administrator because he was not an immediate member of the family. He said his earliest proposal was sufficient as it was made up of two sisters of the deceased and a nephew to the deceased, i.e. the Objector. These disagreements prompted this ruling.

[2] The court shall be guided by section 66 of the Law of Succession Act which provides that;

**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 interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-**

**(a) .....**

**(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;**

**(c) .....**

**(d) .....**

In a case such as this where parties do not agree as to the person or persons to whom a grant of letters of administration should be made, the court has the final say in the matter. The discretion is however exercised judicially, in the best interest of all concerned with the order of priority provided for in section 66 and Part V of the law of Succession Act acting as a fundamental guide. The order of preference or priority is tabulated in the section to be;

**a) Surviving spouse or spouses or 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**

The deceased did not marry, left no spouse or children. Therefore the most appropriate guide of Part V of the law of Succession Act is section 39 – **where the intestate has left no surviving spouse or children;** more specifically section 39(1) (c) which places brothers, sisters and children of deceased brothers and sisters at same priority plane. Other relatives come much lower and in fact rank at the bottom level of the hierarchy. Although those preferences only act as a guide, they form part of defined legal considerations which the court should take into account in determining who should become administrators of the intestate estate- but of course the discretion must be exercised in the best interest of all the persons concerned in the estate. The person being proposed by the Objector is a distant relative. The three who were proposed by the Petitioner are sisters and nephew of the deceased. The Objector is one of the proposed administrators. There is absolutely no lawful justification or deficiency which would impel the court to include a distant relative in the administration of the estate where there are already three competent persons to do so. In my experience, I have noted a grave misconception among many beneficiaries who think that by becoming an administrator you are automatically a beneficiary of the estate or you are placed in a vantage position in the estate in relation to entitlement in the estate. This is further from the truth of law. An administrator need not be a beneficiary in the estate of the deceased. Administrators are merely appointed as personal representatives of the estate of the deceased as a matter of law, and with huge responsibilities to administer and distribute the estate in accordance with the Law of Succession Act. The administrator also assumes accountability responsibility to the law, the beneficiaries and court. In this case, I note that all the objections by the Objector relate to the identities and respective shares of all persons beneficially entitled to the estate; this is a task for administrators once appointed or to be done by the court, if parties do not agree. It is also a matter falling within confirmation proceedings and not at this stage of appointment of administrators. I note also that the objector has no objection to the other two proposed persons to be made administrators. The objector does also suffer any deficiency as to require another person to make up for it. Therefore, I do not see any need of adding Peter Nyumu as an administrator. The three are sufficient. Accordingly, I hereby appoint the following persons

three to be the administrators of the estate of the deceased:-

- a) **Joyce Kanja Jacob**
- b) **Jerusha Karimi Kanake and**
- c) **Julius Mutuma Ntangi**

The three persons to be joint administrators of the estate of the deceased and I hereby make a grant of letters of administration to the three as joint administrators. To avoid any further delay, Mr Mwirigi shall file an application for confirmation of the grant herein within 30 days of today. If the administrators and the all beneficiaries can agree on the identities of and respective shares of all persons beneficially entitled to the estate, then they can file an affidavit to that effect. But if they can't agree, Mr Mwirigi shall file an affidavit by his clients and the Objector shall also file his own affidavit for consideration by court. It is so ordered.

**Dated, signed and delivered in court at Meru this 25<sup>th</sup> day of January 2016.**

**F. GIKONYO**

**JUDGE**

**In the presence of:**

**Mr. Mwirigi advocate for the petitioner**

**Objector in person - present**

**F. GIKONYO**

**JUDGE**