



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**SUCCESSION CAUSE NO. 549 OF 2012**

**IN THE MATTER OF THE ESTATE OF THE LATE NGARA GATHURI alias NGAARA  
GATHURI-DECEASED**

**Teresa Wangui Ngara.....Applicant**

**Versus**

**Kiama Gathuri Ngara.....1<sup>st</sup> Respondent**

**Karoki Gathuri.....2<sup>nd</sup> Respondent**

**RULING**

On 13<sup>th</sup> February 2015, pursuant to an application dated 20<sup>th</sup> February 2014, filed by the applicant herein, this honourable court revoked the grant of letters of administration to the deceased's estate issued to the Respondents herein. Following the said order, the applicant herein, a widow to the deceased filed the application now under consideration dated 27<sup>th</sup> April 2015 seeking orders that the grant of letters of administration herein be issued her. I have considered the grounds on the face of the said application, the supporting affidavit and the replying affidavit.

Guidance in this application can be found in the provisions of Section **66** of the Law of Succession Act<sup>[1]</sup> which provides as follows:-

*"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) surviving spouse or spouses, with or without association of other beneficiaries;*
- (b) other beneficiaries entitled on intestacy, with priority 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.*

The order of preference is provided for under section **66** cited above. Under section **66**, the court has a final discretion as to the person or persons to whom a grant in the best interests of all concerned shall be made, but the guiding principle is the order of preference provided in the said section and top on the list is the surviving spouse or spouses with or without association of the other beneficiaries. The Respondents are brothers to the deceased.

I find no reason for this court to deviate from the order of priority provided under the said section and the applicant being the widow of the deceased tops the said order of priority. Guided by the said section and in exercise of this courts discretion as provided for under the said section, I allow the application dated 27<sup>th</sup> April 2015 and order as follows:-

- i. *That a grant of letters of administration to the estate of the late **Ngara Gathuri alias Ngaara Gathuri-deceased** be and is hereby issued to **Teresa Wangui Ngara**.*
- ii. *That the Respondents shall be at liberty to file a protest to the confirmation of the said grant (if they so wish) in the event they find it fit to contest the distribution of the estate as shall be proposed in the application for confirmation.*
- iii. *No orders as to costs.*

Right of appeal 30 days

Dated at Nyeri this 19<sup>th</sup> day of February 2016

**John M. Mativo**

**Judge**

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[\[1\]](#) Cap 160, Laws of Kenya