



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 1371 OF 1997**

**IN THE MATTER OF THE ESTATE OF EVANSON NGOTHI KAHARWA (DECEASED)**

**MONICAH NYAGICHUHI NGOTHI.....APPLICANT**

**VERSUS**

**JOHN GIKARU NGOTHI.....RESPONDENT**

**PERIS WAMBUI NGOTHI.....PETITIONER**

**RULING**

1. The deceased Evanson Ngothi Kaharwa died intestate on 19<sup>th</sup> March 1991. He was survived by one wife Peris Wambui Ngothi (the petitioner) and five children Monicah Nyagichuhi Ngothi (the applicant), Samuel Kibuchi Ngothi, Erastus Njoroge Ngothi, Alice Esther Waithera Ngothi and John Gikaru Ngothi (the respondent). The petitioner petitioned for letters of administration intestate on 3<sup>rd</sup> July 1997. A grant was issued to her on 4<sup>th</sup> September 1997 and confirmed on 2<sup>nd</sup> June 2000. She died on 17<sup>th</sup> September 2005 before she could distribute the estate. On 25<sup>th</sup> September 2015 the applicant filed this application seeking to be substituted as the administrator of the estate in place of her late mother. The respondent opposed the application.

2. It is notable that prior to this application, the respondent filed an application dated 19<sup>th</sup> January 2015 seeking to revoke and/or annul the grant issued to the petitioner. His complaint, which is the same complaint now, was that petitioner filed the Cause without reference to him, and without indicating in the affidavit in support that he was one of the children of the deceased and therefore entitled to benefit from the estate; that, even when the distribution was eventually done he was not invited or his consent sought, although some provision was made for him. Lastly, that the deceased had another piece of land (LR No Ndabibi/Block 2/Tarabete/104) which was not disclosed. Also not disclosed was that the deceased had sold 2 acres of the land to Geoffrey Kinyua Gacheru (the 2<sup>nd</sup> applicant in the application for revocation) which had not been formally transferred.

3. The court directed that the application for substitution be heard in priority.

4. The affidavits and statements filed by the applicant and her siblings indicate that the respondent was left out of the petition because he was violent, uncaring, drunk, etc. The rest of the family was opposed to him being an administrator of the estate of the deceased.

5. *Prima facie*, all the children of the deceased have an equal claim to the estate of the deceased. Without being seen to be dealing with the pending application, I find that the interests of justice dictate that the respondent be allowed to participate in the administration of his late father's estate. Consequently, I allow the application dated 24<sup>th</sup> September 2015, except that the name of the petitioner (now deceased) shall be substituted with those of Monicah Nyagichuhi Ngothi and John Gikara Ngothi as the administrators of the estate of the deceased Evanson Ngothi Kaharwa.

**DATED and SIGNED at NAIROBI this 15<sup>TH</sup> day of FEBRUARY 2016.**

**A.O. MUCHELULE**

**JUDGE**

**DELIVERED at NAIROBI on the 16<sup>TH</sup> day of FEBRUARY 2016.**

**W. MUSYOKA**

**JUDGE**