



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIVASHA
SUCCESSION CAUSE NO. 56 OF 2015
FORMERLY NAKURU SUCCESSION CAUSE 436 OF 2010

IN THE MATTER OF ESTATE OF

ESTHER WANGUI CHEGEDECEASED

MZEE MOHAMED.....1ST PETITIONER

JOHN CHEGE.....2ND PETITIONER

-VERSUS-

JOHN NJENGA MBARA.....OBJECTOR

RULING

1. The deceased herein died intestate on 16th January, 2015. At the time, she was cohabiting with the first Petitioner as man and wife. Following her death, the funeral committee authorized the two Petitioners herein to commence succession proceedings.
2. However, upon the proceedings being gazetted, the Objector raised an objection to the effect that as a brother to the deceased he was not involved, that not all the beneficiaries were listed, and finally that the 1st Petitioner was not legally married to the deceased, not having paid dowry.
3. For his part, the Respondent asserts himself to be the widower who survived the deceased and lists several debts allegedly owed by the deceased at the time of death. He disputes the Objector's right to participate in the proceedings and asserts that all the beneficiaries had been included in the Petition.
4. I have considered the affidavits filed herein as well as the submissions by the parties. There is no dispute that the Objector is a brother to the deceased while the 2nd Petitioner is a nephew. The deceased left no children, but it would seem from the Respondent's annexures **MM2 (a)** and **(b)** that the 1st Petitioner, referred to as **Mzee Mohamed** was taken as a member of the family of the deceased, whether or not any dowry had been paid to the Objector's family.
5. I think it will require further evidence to confirm whether a marriage or presumption of marriage

between the 1st Petitioner and the deceased can be established. Such evidence will enable the court to determine whether to treat the 1st Petitioner as a surviving spouse or even as a dependant of the deceased.

6. Secondly, it seems to me that one of the underlying issues behind the objection is the distribution of the estate of the deceased, which also can be determined at the proper timer, during the confirmation of the grant.

7. For now, I would order that a grant issues in the joint names of the 1st and 2nd Petitioners as well as the Objector. If parties are unable to agree on the identities of the beneficiaries and distribution, then proceedings will have to be taken by way of affidavits and submissions in respect of any application for confirmation of the grant herein issued. Parties to bear own costs.

Delivered and signed on this **29th** day of **July**, 2016.

In the presence of:-

For the Petitioner s : Miss Kithinji holding brief for Mr. Njuguna

For the Objector : In person

Court Clerk : Barasa

C. MEOLI

JUDGE