



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT**  
**NAIROBI**  
**SUCCESSION CAUSE NO. 504 OF 1987**  
**IN THE MATTER OF THE ESTATE OF KAHUGI GITURO (DECEASED)**

**RULING**

1. On 25<sup>th</sup> February 2015 the parties agreed by consent to have the grant that had been made to the Public Trustee on 28<sup>th</sup> September 1993, and confirmed on 29<sup>th</sup> August 1994, revoked, and a further consent for the Public Trustee to render accounts of her administration of the estate from 1993 to 25<sup>th</sup> February 2015.
2. On 7<sup>th</sup> July 2015, the advocates appearing invited the court to give directions on appointment of fresh administrators. It was indicated by Mr. Chege, speaking largely for all counsel appearing, that the agreement was that each of the four houses of the deceased be represented in the administration of the estate. It was proposed that the representations be as follows:
  - a. House 1 – Gituro Ndungu Kahugi;
  - b. House 2 – Patrick Kuria Kahugi;
  - c. House 3 – Stephen Mungai Kahugi; and
  - d. House 4 – Anne Wambui Kahugi.
3. After Mr. Githinji for Gituro Kahugi Gituro raised reservations about the names mentioned by Mr. Chege, I opted to hear the members of the four houses directly.
4. The members of the first house present were Gituro Ndungu Kahugi and Joyce Wangari. This house settled on Gituro Ndungu Kahugi. Those present from the second house were Njoroge Kahugi, Patrick Kuria Kahugi, Alice Wangui, Mary Waithera, Joan Wairimu, Serah Wangui, Gilbert Njuguna and Gituro Kahugi. Patrick Kuria Kahugi was proposed by Njoroge Kahugi, Alice Wangui, Mary Waithera and Joan Wairimu. Gituro Kahugi proposed himself, and was supported by Serah Wangui. The argument was that the latter was the eldest in the house.
5. Present from the third house were Grace Njeri Wachira, Gituro Kahugi Gituro, Hellen Njeri Kariuki and Steven Mungai Kahugi. Steven Mungai Kahugi was proposed by Grace Njeri Wachira and Hellen Njeri Kariuki. Gituro Kahugi Gituro addressed the court, saying that he had a history of involvement in the administration of the estate, suggesting therefore that he was the most suitable from that house. There were two individuals from the fourth house, Anne Wambui and Mercy Chege. They agreed on Anne Wambui.

6. After hearing the parties, I directed that I would first go through the court file before making the appointment of administrators. I directed the parties to file their respective submissions on the matter, which they have done. I have gone through the entire record herein, inclusive of the applications, the subject of this ruling, and the written submissions. I am satisfied that the deceased had married four times under a system of law allowing polygamy. Consequently, any appointment of administrators ought to take that into account, and so far as possible all the four houses ought to be represented in the administration of the estate.

7. Issues were raised concerning suitability, where, in respect of the second house, it was argued that the oldest person in the house was the most suitable person for appointment as administrator on account of age, it being said that was in keeping with custom and the Bible. I have considered the provisions of the Law of Succession Act, Cap 160, Laws of Kenya, on qualifications of persons for appointment as administrators, and I have not seen any provision that states that the oldest person in the family would have priority over everybody else with respect to appointment as administrators.

8. In the second and third houses it would appear that there are persons that the majority of members of those houses prefer as administrators as opposed to those who propose themselves or are proposed by a minority. Kenya is an open and democratic society, and the person who has the support of the majority carries the day. The office of administrator is one of trust, and whoever has the support of the majority, no doubt, would enjoy their trust and confidence.

9. There is the issue of accounts. The Public Trustee has bowed out as administrator. She has been in office since 1993. She should handover to the new office holders. The handover exercise would require her to prepare accounts of her administration of the estate thus far so that there can be smooth transition. Rendering of accounts is a matter of course, and it is a statutory requirement. The Public Trustee herself has evinced her willing to account if called upon to.

10. All the other issues raised in the applications, in my view, can only be competently handled after appointment of new administrators. The confirmation orders went with the grant to the Public Trustee. The grant to appoint the new administrators would have to be confirmed. Who would be entitled to a share in that distribution is a matter to be addressed at that stage, so should the question of which law ought to govern the distribution, which property is available for distribution, and how it ought to be distributed.

11. Consequently, I do hereby make the following orders:

- a. **That I appoint Gituro Ndungu Kahugi, Patrick Kuria Kahugi, Stephen Mungai Kahugi and Anne Wambui Kahugi administrators of the estate of the deceased;**
- b. **That a grant of letters of administration intestate shall issue accordingly to them;**
- c. **That the new administrators, or any one of them, shall thereafter apply for confirmation of the said grant within thirty (30) days;**
- d. **That any survivor of the deceased (including any one of the administrators) who shall be aggrieved by the distribution proposed in the confirmation application to be filed, in terms of (c) above, shall be at liberty to file an affidavit or affidavits in protest to the said application;**
- e. **That the Public Trustee is given thirty (30) days to prepare and place before the court a detailed inventory of the assets of the estate and a true and accurate statement of the account of the administration of the estate of the deceased by her for the period that she was the administrator thereof; and**
- f. **That costs shall be in the cause.**

**DATED, SIGNED and DELIVERED at NAIROBI this 22<sup>ND</sup> DAY OF JULY, 2016.**

**W. MUSYOKA**

**JUDGE**