



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
SUCCESSION CAUSE NO 113 OF 2006

In the Matter of the Estate of M'thuranira M'rimberia (Deceased)

RAZARO MURIUKI M'THURANIRA..... PETITIONER

Versus

MICHAEL KIUGU M'THURANIRA..... APPLICANT

RULING

Death of administrator

[1] The administrator in this estate one RAZAROMURIUKIM'THURANIRA died on 14th August 2015. Two persons namely **Michael Kiugu M'Thuranira** and **Florence Kagutu Muriuki** made separate applications dated 21st September 2015 and 13th November 2015 respectively; each one of them seeking to be appointed the administrator of the estate in view of the death of the administrator. The parties agreed that these two applications be heard together through written submissions. I will consider those submissions. But, for purposes of this ruling, I will refer to **Michael Kiugu M'Thuranira** and **Florence Kagutu Muriuki** as the 1st and 2nd Applicant respectively.

1st Applicant: I am the son of deceased

[2] The 1st Applicant argued that, since the 1st Applicant is the daughter-in-law of the deceased and he is the son of the deceased, he is most qualified to be appointed the next administrator. He stated that he also have the support of all other siblings to be appointed as such. He urged further that, in the absence of his mother applying, he has preference over the 2nd Applicant under section 66 of the Law of Succession Act. He did not stop there; he submitted that appointing a daughter in law would be contrary to the law as she is not a relative. Again he stated that the entire estate has already been distributed with no issues pending.

2nd Applicant: I am spouse of the deceased administrator

[3] The 2nd Applicant on the other hand stated that she is the surviving spouse of the deceased administrator and as such nobody else except her should be appointed administrator of the estate of the deceased. She also cited section 66 of the Law of Succession Act as her support. She submitted that it is essential that she be appointed the administrator in order to complete the administration of this estate.

DETERMINATION

Revoking grant to deceased administrator

[4] I wish to set the record straight. Contrary to the submissions by the 1st Applicant, the administration of this estate is not completed yet; the 1st Applicant averred as much in his paragraph 3 of the Supporting affidavit. I do not, therefore, understand why he made a contrary submission. That notwithstanding, by the death of the initial administrator, the grant made to him has become useless or inoperative under section 76(e) of the Law of Succession Act; and should be revoked. Accordingly, I revoke the grant made to RAZARO MURIUKI M'THURANIRA. Now, there is absolute legal necessity to appoint an administrator. But who will that person or persons be?

Discretion to appoint administrators

[5] The parties cannot agree on the person or persons to be appointed as administrator of the estate of the deceased. I will therefore fall back to final discretion of the court and appoint the person or persons to be administrator of the estate of the deceased. Like all other discretions, the discretion of the court to appoint administrators of the intestate must not be exercised whimsically but upon defined legal principles and in accordance with the circumstances of each case. In this case, the general guide of the exercise of discretion is provided in Section 66 and Part V of the Law of Succession Act: Accordingly, the important factors to consider in the exercise of this discretion are; (1) the order of preference; and or (2) right and degree of entitlement to inheritance; and (3) the best interest of all the parties concerned taking the circumstances of the case into account. I will now weigh the facts of this case on this legal yardstick.

Spouse in the sense of s.66(a)

[6] The 1st Applicant is the son of the deceased and the 2nd Applicant is the widow of the deceased administrator; the deceased administrator was also the son of the deceased and a beneficiary in the intestate estate of the deceased. I note both applicants are claiming priority over the other in appointment as administrator. But before I can enter into the merit of these arguments, I see a misapprehension of section 66(a) of the Law of Succession Act from the submission by the 2nd Applicant which I should correct. The spouse in section 66(a) of the Law of Succession Act refers to the spouse of the intestate to whose estate these proceedings relate and not the spouse of the deceased administrator. These proceedings relate to the estate of the deceased, i.e. M'THURANIRA M'RIMBERIA and not RAZARO MURIUKI M'THURANIRA. The 2nd Applicant is the spouse of the deceased administrator and not of the deceased to whose estate these proceedings relate. I do not think, therefore, that on that basis she would claim priority over the 1st Applicant. I return to the main arguments. Upon careful consideration of the entire circumstances of this case, it is important consideration that the two applicants are entitled to a share in the estate; of importance is that the deceased administrator is the son of the deceased and his share will go to his spouse, his children and dependants if any. Thus, for purposes of appointment of administrators, both applicants are concerned parties in this estate. Besides this, I also note that there are serious issues which are yet to be resolved; especially those which were subject of a criminal investigation that had been ordered by the court in which the deceased administrator was in the middle of them. Therefore, on the basis of the above realities, the best interest of all the parties concerned commends that I appoint both applicants as joint administrators of the estate of the deceased. I accordingly appoint both applicants as joint administrators of the estate. The grant of letters of administration intestate herein shall be accordingly issued in their joint names so that the remaining issues could be resolved and the administration of the estate completed without delay. Both applications are determined and in view of my orders, each party shall bear own costs of their respective application. It is so ordered.

Dated, signed and delivered in open court at Meru this 16th day of August 2016.

F. GIKONYO

JUDGE

In the presence of:

Mr. Kimaita advocate for Mr. Kirima for Applicant

Mr. Muthomi advocate for Mr. Ikiara advocate for respondent.

1st respondent present

2nd respondent present

Applicants absent.

F. GIKONYO

JUDGE