



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 1546 OF 2013**

**IN THE MATTER OF THE ESTATE OF FRACIAH WANJIKU KARIUKI (DECEASED)**

**RULING**

1. The application for determination is the summons for confirmation of grant dated 21<sup>st</sup> July 2012.
2. I have noted from the affidavit of protest sworn on an unknown date in 2012, but filed in court on 24<sup>th</sup> July 2012, by Geoffrey Karanja Kariuki, that the deceased was survived by seven (7) individuals. These are two (2) more than the five (5) disclosed by the applicant in the application, as well the five (5) listed in the petition. The new names are of Mary Njeri Kamanu and Rachael Gathoni Njoroge.
3. I have noted that the two (2) have not been allotted shares in the estate in the distributions proposed by the applicant and the protestor. I have noted too that the two have not executed any consents in support of the application. There is also no evidence that the two have renounced their entitlement to a share in the estate.
4. The deceased died intestate. Distribution in intestacy is provided for in Part V of the Law of Succession Act, Cap 160, Laws of Kenya. Under those provisions, the estate of the deceased ought to be shared amongst all his children, whether male or female, married or unmarried. There is no discrimination. The only way any child can be excluded is where the individual waives their entitlement to a share in the estate.
5. The applicant is clearly in violation of section 51(2) (g) of the Law of Succession Act and Rule 7(1) (1) (e) (i) of the Probate and Administration Rules, which require that the applicant lists all the surviving children of the deceased in the summons for confirmation of the grant. The applicant did know that Mary Njeri Kamanu and Rachael Gathoni Njoroge survived the deceased but chose not to disclose them.
6. As there is violation of the law as indicated above, I shall not determine the application at this stage. The applicant shall cause Mary Njeri Kamanu and Rachael Gathoni Njoroge to file affidavits stating whether or not they are interested in taking a share in the estate of their dead mother. The applicant shall also serve a copy of this ruling, and of the application dated 21<sup>st</sup> July 2012, on the two (2) women.
7. These proceedings herein concern assets situated at Muguga, Kanyariri, of Kiambu County. The matter shall accordingly be transferred to the High Court of Kenya at Kiambu for disposal.
8. It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI this 26<sup>TH</sup> DAY OF OCTOBER, 2016.**

**W. MUSYOKA**

**JUDGE**