



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 52 OF 2015
IN THE MATTER OF THE ESTATE OF
GEOFFREY KAMAU GITUERE - (DECEASED)

ANASTACIA WANJIKU KAMAU..... APPLICANT

VERSUS

LUCY WANJUHI KAMAU.....1ST RESPONDENT

FRANCIS NGUGI KAMAU.....2ND RESPONDENT

RULING

1. The deceased GEOFFREY KAMAU GITUERE died on 26th November 2014. He left a widow LUCY WANJUHI KAMAU (the 1st respondent) who was the second house whose children were:-
 - a. ROSE PHYLIS NYAMBURA KAMAU;
 - b. FRANCIS NGUGI KAMAU (2nd respondent);
 - c. PAULINE WANGUI KAMAU;
 - d. ANASTASIA WANJIKU KAMAU (applicant);
 - e. IRENE WAIRIMU KAMAU;
 - f. DAVID GITUERE KAMAU;
 - g. ALICE WANJIRU KAMAU; and
 - h. DAMARIS NJERI KAMAU.

2. On 14th January 2015 the respondents filed this petition seeking the grant of letters of administration intestate. In the affidavit sworn in support of the petition the house of the 1st wife was excluded among the beneficiaries. The estate was indicated to comprise:-
 - a. Muguga/Muguga/T.258;
 - b. Sigona/1438;
 - c. Plot No. 12341/7 Kikuyu Township;
 - d. Datsun KVVW 811;
 - e. Savings at Equity Bank Kikuyu Branch A/C No. 0570191680156;

- f. Cooperative Bank Kikuyu Branch A/C No. 0110988516100;
 - g. Savings at KCB Kikuyu Branch A/C No. 1106864883;
 - h. Savings at Barclays Bank, Limuru Branch A/C No. 2021718141; and
 - i. Honda CRV KCA 195E.
3. Before a grant was issued, on 14th April 2015 the applicant filed the present summons seeking to have the petition struck out. There were several grounds, but the main one was that the deceased had died having a written will (“A-1”) and therefore that the petition was irregular, illegal and misconceived. The respondents filed a replying affidavit which they denied that the deceased had left any will. They swore that the purported will was fraudulent and a forgery.
 4. The respondents complained that the applicant did not lodge any notice of objection as required under **rule 17** of the **Probate and Administration Rules**, and neither had she filed an answer to the petition together with a petition by way of cross-petition, supported by an affidavit. Reference was made to the decisions in **RE ESTATE OF AMAR KAUR MATHARU (Deceased) [2014]eKLR** and **IN THE MATTER OF MICHAEL KAMAU KAIGAI (Deceased) [2013]eKLR**. It was further indicated that the applicant was given 15 days to either accept or refuse grant of letters of administration but took no step. The petition was filed three months later and that was when the summons to strike out was filed. I appreciate these grievances by the respondents. However, in each of the two cited cases the Court was dealing with a situation where the petition had been gazetted under **rule 7(4)**. It is after gazettement that any person who wishes to object to the making of the grant is required under **rule 17(1)** to file a notice of objection, an answer to the petition and a cross-petition. In the instant case that stage has not been reached, as the petition has not been gazetted. I see the value of the summons as being information that, according to the applicant, the deceased left a written will.
 5. So that this petition can move forward, I direct the Deputy Registrar to cause the matter to be gazetted so as to allow the applicant to file notice, answer and cross-petition within the requisite time, if she so desires. Otherwise the summons to strike out the petition is a premature step and is disallowed. This is a family dispute and therefore each side should bear its own costs.

DATED at NAIROBI this 22nd day of May 2015

A.O. MUCHELULE

JUDGE

DELIVERED at NAIROBI this 28th day of May, 2015

W. MUSYOKA

JUDGE