



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. 603 OF 2013

**IN THE MATTER OF THE ESTATE OF MUGO KITHINJI alias MUGO GITHINJI
(DECEASED)**

PETER MUNENE MUGO.....APPLICANT

AND

JAMES KINYUA KAMAU.....RESPONDENT

RULING

1. **PETER MUNENE MUGO** the applicant herein has moved this Court for annulment of the entire proceedings herein stating that the cause that should proceed to conclusion is **Kerugoya High Court Succession cause No. 402 of 2014** which cause relates to the same deceased person and the same estate. The grounds upon which the application is based are as follows:

2. (a) *That the named beneficiaries in this cause are the*

grandchildren.

(b) *That the beneficiaries in Succession Cause No. 402 of 2014 are the children of the deceased and thus take a priority.*

(c) *That the respondents have been harassing their parents who are the applicants herein by virtue of the letters of administration issued to them to a point of causing them to be arrested and charged purportedly for interfering with the estate.*

3. The grounds were supported by the Applicant's affidavit sworn on 13th April, 2015 whose contents simply repeats the above grounds apart from the fact that **MUGO KITHINJI** the deceased herein had four children namely:

- i. **Peter Munene Mugo**
- ii. **Dominic Wanjiru Muriithi**
- iii. **Flora Wanjiru Muriithi (daughter in law)**
- iv. **Mark Muthige Mugo**

4. The Applicants have annexed a copy of the charge sheet showing that the above were charged before a Court of Law with the offence of cutting down crops and produce a property said to belong to **JAMES KINYUA KAMAU** – the Respondent herein.

5. Mr. **Ngangah** counsel for the Applicant submitted that they were unaware of this Succession Cause and that is why they went ahead and petitioned for Letters of Administration in a different cause – **Probate & Administration Cause No. 402 of 2014** before the same Court.

6. **Ngigi** counsel for Applicant opposed this application and relied on the affidavit of the Respondent, James Kinyua Kamau sworn on 8th May, 2015. The Respondent admits that the Applicants are children to the deceased and they are grandchildren.
7. What they have disputed is the fact that the Applicants or the deceased's children were excluded in the administration of the estate on purpose or deliberately arguing that they refused to take out Letters of Administration even after citation. The Respondents also contended that the Petitioner was the widow of the deceased and that they succeeded the widow **Susan Wamutira Mugo**, vide an order of this Court dated 19th February, 2015.
8. **Mr. Ngigi** for the Respondents further submitted that the criminal action taken against the Applicants related to intermeddling with the estate. He, however, admitted that the Applicants as the children take priority but that they are well catered for in the confirmation.
9. I have considered the application and I must point out from the outset that with due respect to the Applicant's counsel, the application is not well drafted. In the first place, the Respondents are not clearly indicated from the heading and even the way the reliefs are worded leaves a lot to be desired. However, the application brought out strong legal issues that cannot be ignored and must be addressed. It is only in that regard that I am considering this application in order to dispense justice and expedite the proceedings herein.
10. There are two basic issues here that require determination:
 - i. Who should be administrator (s) of the estate of **MUGO KITHINJI** (deceased)?
 - ii. What should happen where there are two different petitions in respect to the same estate of the same deceased person?
11. The answer to the first question, I agree with the Applicant that the provisions of **Section 66** of the **Law of Succession Act** (Cap. 160) favours him and the other children as opposed to the Respondents. **Section 66** provides as follows:

“When a deceased has died intestate the Court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall in the best of interests of all concerned, be made, but shall, without prejudice to that discretion, accept a general guide the following order..... surviving spouse or spouses.....other beneficiaries as provided by part V.....”

The provisions of **Part V** particularly **Section 39** clearly shows that the children to a deceased person are way above the grandchildren.

12. The Grant of Letters of Administration made to the

Respondent herein, **JAMES KINYUA KAMAU** on 19th February, 2015 was made through concealment of material facts in the cause. The children to the deceased have come to Court now saying that they were not aware of the proceedings that led to the appointment of a grandchild to administer the estate when they are alive and sound. This Court cannot overlook this error and the same need correction. Pursuant to **Section 76** of the Law of Succession Act I hereby review my orders issued on 19th February, 2015 and set them aside on my own motion and in accordance with the law revoke the Grant made to **JAMES KINYUA KAMAU** and appoint the applicant herein, **PETER MUNENE MUGO** as the administrator of the estate of **MUGO KITHINJI alias MUGO GITHINJI** (deceased).

13. On the 2nd question, this Court cannot entertain two petitions

in respect to the same estate of a deceased person. The two petitions **Probate & Administration Cause No. 402 of 2014** and **603 of 2013** shall now be consolidated and the active file in respect to proceedings of this estate shall henceforth be in this cause (Probate & Administration 603 of 2013).

14. In view of the foregoing, the appointed administrator is

directed to proceed to diligently proceed to administer the estate in accordance with the law and in order to bring this dispute to an end he is at liberty to move this Court for confirmation of the Grant before the expiry of the statutory period. In view of the reservations made about this application and also considering the uncalled for actions of the Respondents herein, I shall make no order as to costs. It is so ordered.

Dated and delivered at Kerugoya this 20th day of May, 2015.

R. K. LIMO

JUDGE

20.5.15

Before: Hon. Justice R. Limo

Court Assistant Willy

Mwai holding brief for Ngigi for Respondent.

Maina holding brief for Nganga.

COURT: Ruling signed, dated and delivered in the open Court in presence of Mwai holding brief for Ngigi and Maina holding brief for Nganga for Applicant.

R. K. LIMO

JUDGE

20.5.15