

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. APPLICATION NO. 165 'A' OF 2014

IN THE MATTER OF THE ESTATE OF ANNAH WANGUI MWANGI (DECEASED)

R U L I N G

1. This is an application brought by way of summons filed under Sections 47,51,53 (b), 54 of the **Law of Succession Act** and **Paragraph 14** of the **5th Schedule** of the **Law of Succession read with Rules 59 and 73** of the **Probate and Administration Rules**. It is filed by one Francis Gachango Kamau, a Plaintiff in **HCC No. 931 of 2005 Nairobi, Francis Gachango Kamau Vs. The Kenya Lighting Co. Ltd and Annah Wangui Mwangi** (Deceased). The applicant seeks, in the main, orders granting him leave to nominate **JAMES IRUNGU MWANGI** as an administrator in the Estate of Annah Wangui Mwangi and that the said **JAMES IRUNGU MWANGI** be so nominated.

2. The grounds of the Application are that the Applicant herein is the Plaintiff in **HCC No. 931 of 2005 – Nairobi** while Annah Wangui Mwangi, who passed away on 23rd September 2013 was the 2nd Defendant in the said suit. She was survived by a son **JAMES IRUNGU MWANGI** who is capable and eligible to stand in as an administrator to the Estate of the deceased. That the cause of action has subsisted and since the Estate has not appointed an administrator to date, the suit will abate unless the orders sought are granted.

3. The Application is supported by the Applicant's Affidavit sworn on 21st August 2014, in which he depones that Annah Wangui Mwangi (Deceased) was survived by a son **JAMES IRUNGU MWANGI** whom he wishes to nominate to be enjoined in **HCC No. 931 of 2005 Nairobi, Francis Gachango Kamau Vs. Kenya Power and Lighting Co. Ltd and Annah Wangui Mwangi**, to take care of the interest of his deceased mother. That the said **JAMES IRUNGU MWANGI** is eligible to be appointed as an administrator to the Estate of the deceased herein and he is seized of the facts surrounding the said suit.

4. To the applicant's knowledge, **JAMES IRUNGU MWANGI** is entitled and eligible to administer the Estate of his late mother but is either unwilling or unable to act, hence this application to nominate him in terms of paragraph 14 of the 5th Schedule of the Law of Succession Act.

The Applicant asserts that efforts to enquire whether the Estate has appointed an administrator have gone unanswered, as set out in the letter dated 2nd May 2014 annexed hereto and marked as **FGK -3**.

5. The application is undefended. The court has considered the application and finds that, procedurally, it is proper that the applicant commences by way of citation to the person deemed to have priority of right, to petition for grant of Letters of Administration in the Estate of Annah Wangui Mwangi. Thereafter, the applicant can seek other orders from the court if the Citee does not respond.

For the foregoing reason, this application is deemed to be premature and is dismissed accordingly.

SIGNED DATED and DELIVERED in open court this **21st day of September 2015**.

L. A. ACHODE

JUDGE