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**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 4 OF 2010**

**V M K.....1<sup>ST</sup> PETITIONER**

**L N M.....2<sup>ND</sup> PETITIONER**

**VERSUS**

**T M M..... OBJECTOR**

**R U L I N G**

1. **LNM** (deceased) died on the **24<sup>th</sup> December 2009**. **VMK** and **LNM** petitioned for letters of administration intestate of the deceased's estate in their capacity as his widow and son respectively. **T MM**, the Objector, an elder brother to the deceased lodged an objection in court on the **5<sup>th</sup> March 2010**. On the **21<sup>st</sup> April 2010** he filed a cross petition for a grant. He stated that he was a beneficiary to the estate of the deceased. He undertook to administer the estate of the deceased in accordance with the law.
2. In order for the court to determine the issue parties agreed to canvass the objection by way of viva voce evidence.
3. The 1<sup>st</sup> Petitioner stated that she married the deceased under **customary law** in **1986**. Thereafter they solemnized their marriage in the year **1989** under the **Marriage Act**. They were issued with a marriage certificate **No.[particulars withheld]**. Their son the 2<sup>nd</sup> Petitioner was born in 1983. In the course of their marriage they acquired property among them plot **Number [particulars withheld]** and a parcel of land **Number [particulars withheld]**. As a professional teacher she lived away from her husband while he practiced law in Kitui. He lived in their house at **Kaango Estate**. The building housed his office. Some other rooms were occupied by tenants. To date the Objector collects rent from the tenants. She denied having divorced the deceased or separated from him during his lifetime.
4. Further, she stated that the Objector used to assist the deceased. He was not his dependant. He even advanced him money which was however repaid after their house in Nairobi was sold, therefore, he had no claim against them. On cross examination she denied having abandoned the deceased and only returned to bury him.
5. In his evidence the Objector stated that the deceased was mentally ill. He was deserted by the 1<sup>st</sup> Petitioner. He took the deceased to **Mathare Hospital** and on being discharged he lived with him. He objected to letters of administration being issued to the Petitioners because his brother had authorized him to take care of his property and hand over to his son upon getting married. He blamed the 1<sup>st</sup> Petitioner for disposing off the deceased's property. Admitting that there are **five**

- (5) tenants living in the deceased's house he said that rent collected is used for purposes of maintenance. He denied having an interest in the property of the deceased. Stating that the 2<sup>nd</sup> Petitioner is 30 years old, he argued that he was not mentally stable and they were only interested in the properties because they wanted to dispose them off.
6. On cross examination he stated that he had no objection to the deceased's property being given to the 2<sup>nd</sup> Petitioner on condition that he got married. He stated that it was mandatory for him (Objector) to be recognized in order to give the 2<sup>nd</sup> Petitioner his entitlement at their ancestral home. He admitted having lied on oath about the status of the deceased's property.
  7. Only the Petitioner's counsel filed submissions. I have considered evidence adduced by both the Petitioner and Objector. I have also considered submissions filed.
  8. According to **Section 66** of the **Laws of Succession Act**, this court has the discretion as to who should administer the estate of the deceased but preference has to be given to the surviving spouse with or without association of other beneficiaries.
  9. The Objector herein claimed he was a beneficiary to the estate of the deceased. At the hearing he denounced his claim. He denied being a beneficiary to the estate of the deceased. He also denied having any interest in the estate. He only sought to be recognized as an elder brother wielding authority according to the customary law.
  10. It has been established that the only beneficiaries to the estate of the deceased are the Petitioners herein. The Objector in his testimony tried to portray the 1<sup>st</sup> Petitioner as an irresponsible person whose sole purpose of wanting to administer the estate is to dispose it off, while the 2<sup>nd</sup> Petitioner may be negligent and of unstable mind. This allegation was not proved.
  11. As a court I observed the demeanor of the Objector, he was neutral in respect of the Petitioners and the assets belonging to the deceased. He proved that he particularly had interest in his late brother, but he was unconcerned with the Petitioners. Such a person cannot be entrusted with a duty of administering an estate where the Petitioners are to benefit.
  12. In the premises, I dismiss the objection and cross-petition filed herein. Consequently, I grant letters of Administration intestate of the estate of **L N M** to the Petitioners herein.
  13. It is so ordered.

**DATED, SIGNED and DELIVERED** at **KITUI** this **9<sup>TH</sup>** day of **DECEMBER, 2014**.

**L.N. MUTENDE**

**JUDGE**