



**REPUBLIC OF KENYA**

**High Court at Embu**

**Succession Cause 318 of 2010**

**IN THE MATTER OF ESTATE OF MBOGO KAUMA..... DECEASED**

**ROSELINE KATHANJE MBOGO ..... PETITIONER**

**VERSUS**

**CATHERINE MECKY WARUE MBOGO..... OBJECTOR**

**RULING**

This is the objector's objection to making of Grant dated 14/2/2011. It's based on 2 grounds;

- a) That the Petitioner did not seek her consent before filing the petition.**
- b) The Petitioner did not include her name in the list of beneficiaries**

The objection is accompanied by a petition by way of cross Application for Grant dated 16/2/2011. The application is supported by the affidavits of the Objector, Duncan Kauma and George Kauma both being the sons of the Petitioner and the deceased. The averments in all the affidavits point to the fact that the Objector was the daughter of the deceased. And that he brought her up alongside the other children. And that Duncan & George refused to sign the consent form because they noticed that their mother (Petitioner) was being discriminatory against their sister (the objector). I have not seen any response in form of a Replying affidavit by the Petitioner to these affidavits.

Both Counsels have filed submissions concerning the objection by consent.

The Objector has stated her relationship with the deceased. The Petitioner is her aunt but again her step mother. The reason being that her biological mother is a sister to the Petitioner. Since the averments in the affidavits of the Objector and 2 of the Petitioner's own sons have indicated that indeed the Objector is the deceased's daughter, I find no reason to disbelieve them. Her interest must be protected.

The two sons have also not signed the consent forms as can be witnessed from the forms filed. Section 66 of the Law of Succession Act provides for a general guide on the order of preference for those to be given grant.

However the Court has the discretion after considering ALL circumstances and in the best interest of all concerned to give grant to the right person/persons.

The Objector as a child of the deceased must have her interest protected especially after the Petitioner elected to keep her out of the whole process. Her consent was never sought and she was omitted from the list of beneficiaries. The Petitioner can't be trusted to protect that interest.

I therefore find that in the interest of all, the application of objection to the grant of letters of Administration of the estate of the deceased Mbogo Kauma is allowed. The result is that grant of letters of Administration shall be issued in the joint of names of the Petitioner and the Objector. This is the to ensure that the interest of both parties are protected.

**DATED AND DELIVERED AT EMBU THIS 19<sup>TH</sup> DAY OF FEBRUARY 2013.**

**H.I. ONG'UDI  
J U D G E**

In the presence of;

Mr. Kamunyori for Objector

Mr. Waweru for Ithiga for Petitioner

Njue – C/c