

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Succession Cause 2806 of 2007

LUCY NJOKI NJOROGÉ.....APPLICANT

VERSUS

DANSON MUGWI NJOROGÉ

JAMES ALLAN KAMAU

JANE NYAMBURA NJOGU.....
.....RESPONDENTS

R U L I N G

On 22nd July in 2007, the Respondents petitioned this court seeking to be granted letters of administration intestate in respect of the Estate of the deceased. The Respondents' list of beneficiaries excluded the applicant and her children. It was common ground that the Applicant was married to a son of the deceased by the name Geoffrey Dickson Njoroge. He died on 16th May 2005 leaving behind the Applicant and her two (2) children namely; Evelyn Rhoda Njoki Njoroge and Brenda Wacuka Njoroge. According to the Respondents, the reason they excluded the Applicant in the list of the beneficiaries of the deceased was because the Applicant, as a daughter in-law of the deceased was not recognized as a dependant of the deceased pursuant to the provisions of **Section 29** of the **Law of Succession Act** which specifies persons who ought to be considered as dependants of a deceased person. In response to this argument, the Applicant was of the view that her claim to be considered as a beneficiary of the estate of the deceased was on the basis that her late husband would have benefit from the said estate had he been alive.

This court has carefully considered the rival arguments put forward in regard to whether the Applicant and her children should be considered as beneficiaries of the estate of the deceased. While it is true that **Section 29** of the **Law of Succession Act** does not specifically recognize a daughter in-law as a dependant of the deceased, the interpretation to that section given by the Respondents is misguided against the spirit of the Law of Succession Act. The basis of the Applicant's claim to the estate of the deceased is because her late husband Geoffrey Dickson Njoroge, a son of the deceased, would have been entitled to inherit from the estate of the deceased if he was alive. The Applicant's claim is therefore in respect of the share that her late husband would have been entitled to were he still alive. The late Geoffrey Dickson Njoroge's share in the estate of the deceased was not extinguished by his death. It survived him through his widow, the Applicant, and their two children. For the avoidance of doubt, **Section 29(a)** of the **Law of Succession Act** recognizes the children of a deceased person as dependants of such deceased whether or not they were maintained by the deceased immediately prior to his death. I hold that the Applicant and her two (2) children shall be considered to have substituted the late Geoffrey Dickson Njoroge as dependants of the estate of the deceased.

In the premises therefore, I will partially allow the Applicant's application which sought to annul the grant that was issued to the Respondents by this court on 21st January 2008. I will revoke the said grant and issue a new grant to the Respondents, Danson Mugwi Njoroge, James Allan Kamau and Jane Nyambura Njogu together with the Applicant Lucy Njoki Njoroge. I further order that the Applicant and her children shall be included as dependants of the deceased. They shall be entitled to inherit the portion of the estate of the deceased that would have been inherited by the late Geoffrey Dickson Njoroge, a son of the deceased. The administrators, who have now been appointed by this court, are ordered to file

summons for confirmation of grant within sixty (60) days of today's date. Any beneficiary dissatisfied with the proposed distribution shall be at liberty to file an affidavit of protest. There shall be no orders as to costs.

DATED AT NAIROBI THIS 19th DAY OF APRIL, 2013

L. KIMARU

JUDGE