

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

SUCCESSION CAUSE NO: 2413 OF 2011

IN THE MATTER OF MICHAEL KAMAU KAIGAI - (DECEASED)

RULING

The petition filed in court on 7th November 2011 is in respect of the estate of Michael Kamau Kaigai. It asks for a grant of probate predicated on the will of the deceased made on 21st July 2010. The said will appoints Miriam Wanjiku Mwangi and Florence Kaigai Kamau executors of the will and trustees of the estate of the property. The said Miriam Wanjiku Mwangi and Florence Kaigai Kamau are the petitioners in the matter.

After the petition was gazetted on 17th February 2012 vide **Gazette Notice No. 1738 of 2012**, Mary Njeri Kamau filed a Notice of Objection on 23rd February 2012. She asserted that she was a widow of the deceased and the mother of four children sired by the deceased.

Directions on the matter were given on 23rd July 2012. It was directed that the matter be disposed of by way of affidavit evidence and the parties were given thirty days to file and exchange their respective affidavits. The objector filed hers on 13th August 2012. The petitioners did not file any.

The law governing objections to making of grants is set out in Rule 17 of the Probate and Administration Rules. The process is initiated by the filing of a notice of objection by the person who proposes to object to the grant. Upon the lodgment of the notice of objection, the probate registry should send out a notice to the objector requiring him within specified period of time to file an answer to the petition for grant together with a petition by way of cross-application, supported by an affidavit. If the objector does file the answer to petition and the petition by way of cross-application, the matter is set down for directions on the mode of disposal of the objection proceedings. If no such pleadings are filed the court should proceed to make the grant to the petitioners.

Valid objection proceedings, it would appear from my reading of Rule 17, are founded on three critical documents -

- (a) answer to the petitioner.
- (b) petition by way of cross-application.
- (c) affidavit setting out the facts relied upon by the objector.

These documents form the pleadings for the purpose of the objection proceedings. It the filing of these documents that makes the matter contentious and triggers a full trial.

The objector in this cause has not complied with the requirements of Rule 17. She only filed a notice of objection. She did not file an answer to the petition and a petition by way of cross-application. She did file an affidavit but it is not the affidavit envisaged in Rule 17. The same is hanging, it stands alone instead of being there to verify the answer to the petition and the cross- petition. Quite clearly, there is no objection on record. There are therefore no objection proceedings before me.

The orders that ought to be made in objection proceedings are founded on the petition and the cross-petition. What I have before me is the petition above. There is nothing to stop me from granting the prayers sought in the said petition. Consequently it is my orders that:-

(a) the petition on record filed in this cause on 7th November 2011 is hereby allowed;

(b) grant of probate of the last will of Michael Kamau Kaigai made on 21st July 2010 is hereby made to Miriam Wanjiku Mwangi and Florence Kaigai Kamau; and

(c) the Deputy Registrar shall case the grant to be processed accordingly.

SIGNED DATED and DELIVERED in open court this **11th** day of **October, 2013**.

W.M. MUSYOKA

JUDGE