



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
Succession Cause 884 of 2010

In The Matter Of The Estate Of Hannah Wanjiri Mwaniki (Deceased)

R U L I N G

The Petitioner, Bedan Nyaga Karani, applied for and obtained a Grant of Letters of Administration in respect of the estate of the late Hannah Wanjiru Mwaniki. He obtained the said Grant on the basis of his presentation of a petition in the capacity of a son of the deceased. His claim to be a son of the deceased was contested by Alice Wambui Maina, Esther Mumbi, Evans Njogu Maina, Mary Wanja Wanjiru and Francis Waweru Wanjiru, all children of the deceased. They contend that the Petitioner is not a son of the deceased and that he is not their mother's son but only their step-brother. Apparently, their father was a polygamist and the Petitioner belonged to a different house from these other children.

This contention is supported by a letter dated 7th November, 2011 and addressed by the Chief of Huruma Location, Mathare Division, in respect of the deceased. It reads as follows –

“TO WHOM IT MAY CONCERN (B. NO.836155)

RE: HANNAH WANJIRU MWANIKI (DECEASED)

The above mentioned deceased was residing in my area of jurisdiction before she met her death on 23rd December, 2002 here in Huruma.

Wanjiru was married to late Joshua Karani and were blessed with 8 children as indicated –

- 1. STANLEY MWANIKI MAINA – DECEASED**
- 2. ALICE WAMBUI MAINA - DAUGHTER**

3. **JOHN KARIUKI MAINA – DECEASED**
4. **ESTHER MUMBI – DAUGHTER**
5. **JAMES MWAI – DECEASED**
6. **EVANS NJOGU MAINA – SON**
7. **MARY WANJA WANJIRU – DAUGHTER**
8. **FRANCIS WAWERU – SON**

Those are the rightful heirs of the deceased's estate and any assistance accorded to them is appreciated.

Thanks.

Yours,

A.M. (illegible)

CHIEF- HURUMA”

This contention is further supported by the oral testimony of Beth Inoi, a sister to the deceased, who appeared before this Court on 5th March, 2012. She told the Court that all the Respondents were the children of her sister but that Bedan Nyaga Karani, the Petitioner herein, was a son of a different mother who was a co-wife to her sister.

From the above evidence, it is patently clearly that Mr. Karani purported to be a biological son of the deceased while he knew well that he was only a step son. In a polygamous establishment such as this one, whereas each child has a right to inherit a share of the father's property, only the biological children are entitled to inherit their mother's property. Mr. Karani therefore misrepresented himself by claiming to be a son of the deceased whereas he was only a step son who had no *locus standi* to inherit the property of his step mother. He came masquerading as a son of the deceased while knowing very well that he was not a biological son. To allow the grant stand would be tantamount to giving the seal of approval of a fraud and thereby allowing the Respondent to benefit from his own wrong. That would be inappropriate both in law and in equity.

For the above reasons, I am satisfied that the person to whom the Grant was made had no *locus* and the said Grant is hereby struck out with no order as to costs.

It is so ordered.

DATED and DELIVERED at NAIROBI this 3rd day of May, 2012.

L. NJAGI
JUDGE