



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE 1094 OF 2007**

**IN THE MATTER OF THE ESTATE OF SERAH NJERI GATHU (DECEASED)**

**RULING**

This application brought by summons dated 16<sup>th</sup> September, 2008, for revocation of grant. It is supported by the annexed affidavit sworn by Teresiah Nyambura on 16<sup>th</sup> September, 2008. She deposes in the said affidavit that the Petitioner herein is a step-daughter of the deceased and that the deceased was her co-wife. She takes the stand that the Petitioner, being a step-daughter of the deceased, does not rank in priority above the applicant's children named therein. She also contends that when the Petitioner applied for letters of administration of the estate of the deceased, she made a false statement to the effect that the deponent, being a co-wife of the deceased, was not entitled in priority to apply for grant of letters of administration of the estate of the deceased.

Against this background, Mr. Kamau for the objector prayed that the application for revocation be granted as the Petitioner obtained the grant by feigning pretence that she was a child of the deceased. It has been admitted that she was not a biological child of the deceased, but claims part of the inheritance on the ground that she was brought up by the deceased. However, no evidence was adduced in support of that position and therefore she failed to bring herself within **Section 38** of the **Law of Succession Act**. On the other hand, the objector is a co-wife of the deceased and no other surviving relative of the deceased has come to claim her estate. Therefore the objector claims under **Section 39(e)** by virtue of falling within the degree of consanguinity with the deceased as against the Petitioner.

In his response, Mr. Wainaina for the Petitioner took the view that the Petitioner and objector should share the estate. The petitioner was a step daughter of the deceased and the objector is a co-wife. After her mother passed on when she was only two (2) years old, the Petitioner was brought up by the deceased as the latter's daughter. In such circumstances, the provisions of **Section 39** would not be applicable and that the applicable provision is **Section 38**.

After considering the pleadings and the respective submissions of counsel, I note from the affidavit evidence on record that the Petitioner is a biological daughter of Thairu Gathu, the objector's husband. She is as much the objector's step daughter as she is the step daughter of the deceased. However, in the relationship of all the children with the deceased, the Petitioner enjoys an upper hand as she was brought up by and in the house of the deceased. To all intents and purposes, she was a child of the deceased and her real misfortune was that her biological mother pre-deceased her father. Unless the objector's motive is to disinherit the Petitioner altogether, the Petitioner is as much a child of that family as the objector's own children. However, her representation that she was a step-daughter of the deceased, which is true, could be misunderstood by some people to mean that she was not being forthright. However, that is exactly what she was. She was a step-daughter not only to the deceased but also to the objector.

**Section 66** of the **Law of Succession Act** is to the effect that when a deceased dies intestate, the court shall have the final discretion as to the person(s) to whom a grant of letters of administration shall be made. Even though the Petitioner and the other children bear the same relationship with the deceased, the Petitioner was closer to deceased by virtue of having been brought up by the deceased and was therefore emotionally closer to her.

In exercise of my discretion under **Section 66**, I revoke the grant made herein and direct that the

Petitioner and the Objector be and are hereby constituted the joint administrators of the estate which should be shared equally between them.

Orders accordingly.

**DATED** and **DELIVERED** at **NAIROBI** this 20<sup>th</sup> day of July, 2012.

**L. NJAGI**  
**JUDGE**