



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO.1151 OF 2007

IN THE MATTER OF THE ESTATE OF GRACE WANJIKU KURIA (DECEASED)

MARGARET WACU KURIA.....1ST
PETITIONER

KENNEDY GACHIRE.....2ND
PETITIONER

VERSUS

JOSEPH KARARA
MBURU.....OBJECTOR

R U L I N G

Grace Wanjiku Kuria (the deceased) died on 20th August 2006. Thereafter, a dispute arose between the petitioners and the objector regarding who between them was entitled to administer the estate of the deceased. The petitioners, are, respectively, mother and brother of the deceased. The objector claims to be the husband of the deceased. It is not in dispute that the deceased was blessed with two (2) children namely Caroline Wacu Wanjiku and K.M. The two (2) children are now aged nineteen (19) and fourteen (14) years respectively. It is acknowledged by both contesting parties that the objector is the father of the second child of the deceased. According to the objector, he was married to the deceased and therefore entitled to administer her estate. The objector explained that he had lived with the deceased for a considerable period of time prior to her death. It is his case that the fact he was the husband of the deceased was acknowledged by the family of the deceased when they allowed him to bury the deceased in his farm. On their part, the petitioners argued that the objector was not married to the deceased prior to

her death. It is the petitioners' case that the deceased and the objector were part time lovers whose relationship did not crystallize into a marriage. The petitioners reiterated that the objector was not married to the deceased either under customary law or under statutory law. The petitioners reiterated that the objector did not pay dowry to the deceased's parents to entitle him to claim that he was married to the deceased. It was further the petitioners' case that the deceased herself did not recognize the objector as her next of kin hence the assertion by the petitioners that they are the ones who are entitled to administer the estate of the deceased.

At the hearing of the objection, this court heard oral submissions made by Miss Matunda for the objector and by Mrs. Maira for the petitioners. The issue for determination by this court is who between the petitioners and the objector is entitled to administer the estate of the deceased. Having evaluated affidavit evidence filed by both parties, it was clear to the court that the objector and the deceased were not formally married either under customary law or under statutory law. There is anecdotal evidence that the objector and the deceased were romantically involved up to a period prior to the death of the deceased. The deceased died in 2006. On 24th December 2004, the deceased wrote a letter to her father by which she disowned the objector. From the said letter, the deceased was emphatic that she was unwilling to be reconciled with the objector despite the effort that were then being made by her parents to have them resolve their differences. In part of the letter, the deceased stated as follows:

“Since July 2003, last year I completely made my final and last DECISION of never reconciling with him (the objector) after he conned me of thousands of money through what turned to me as fake business that never went through.”

It is evident that the deceased and the objector stopped relating to each other as at July 2003. This was three (3) years prior to the death of the deceased. It was further clear that during her lifetime, the deceased struggled on her own to educate her children without the assistance of the objector. Although the objector claims that he lived with the deceased as husband and wife prior to her death, what was apparent from affidavit evidence is that the deceased lived in her own rented house and during her relationship with the objector, was occasionally visited by the objector at her house. The circumstances under which the objector came to bury the deceased in his farm is unclear. What is however not in doubt is that the children of the deceased have since the death of the deceased lived with their maternal grandparents. Although the objector claimed that the said children were forcibly taken away from him by the said grandparents, what is apparent is that the objector did not seek legal intervention to restore the purported custody that he had of the children. It was apparent to the court that the objector wrongly assumed that if he buried the deceased, he would be entitled to administer her estate. The person who buries a deceased is not automatically entitled to administer his estate. Issues regarding the administration of estates of deceased persons is governed by the **Law of Succession Act**. It is not determined on the basis of who buried a deceased.

In the present case, it was clear that the deceased did not recognize the objector as her next of kin. According to the deceased's employment records, the deceased named her mother Margaret Wacu Kuria as her next of kin alternate to her then minor children Caroline Wacu and K.M. In determining who is entitled to administer the estate of the deceased, this court will have to take into consideration the wishes of the deceased. Having evaluated affidavit evidence on record, it was clear to the court that the objector failed to establish that he was married to the deceased. The fact the objector is the father of one of the children of the deceased does not establish that he was married to the deceased. It was apparent to the court that the deceased took care of her children until her untimely death. Thereafter, the maternal grandparents of the children took custody of the children. The rightful heirs of the estate of the deceased are her children. It was clear to the court that the objector has not bothered to provide for the education of

the children of the deceased since the death of the deceased. This responsibility has been left with the maternal grandparents of the children. It is therefore evident that it is the petitioners who are entitled to administer the estate of the deceased.

In the premises therefore, this court holds that the objector has failed to establish that he was the husband of the deceased. He has failed to establish that he is entitled to administer the estate of the deceased by virtue of the fact that he has taken care of the children of the deceased. The rightful heirs of the estate of the deceased are the children of the deceased. Since one of the children of the deceased is already over eighteen (18) years, I will appoint her together with her maternal grandmother to be the administrators of the estate of the deceased. I therefore appoint Margaret Wacu Kuria and Caroline Wacu Wanjiku to be the administrators of the estate of the deceased. For the avoidance of doubt, the sole beneficiaries of the estate of the deceased shall be the children of the deceased. There shall be no orders as to costs.

DATED AT NAIROBI THIS 21ST DAY OF JANUARY, 2011

L. KIMARU

JUDGE