



## **SUCCESSION**

- Consideration of application for leave to file objection out of time.

### **REPUBLIC OF KENYA**

### **IN THE HIGH COURT OF KENYA**

### **AT MERU**

### **SUCCESSION CAUSE NO. 400 OF 2010**

### **IN THE MATTER OF THE ESTATE OF CHARLES WANGAI GITONGA (DECEASED)**

**MERCY NAITORE WANGAI ..... APPLICANT**

**VERSUS**

**MARY NYAKERU WANGAI ..... PETITIONER**

### **RULING**

The deceased in this estate Charles Wangai Gitonga died on 31<sup>st</sup> May 2010. By a petition filed before High Court Nyeri being Succession Cause No. 677 of 2010, Mercy Naitore Wangai, (Mercy) the 2<sup>nd</sup> wife of the deceased and the mother of the deceased petitioned for grant of letters of administration intestate. In the affidavit in support of that petition, the petitioner listed the persons who survived the deceased who included Mary Nyakeru Wangai (Mary) the 1<sup>st</sup> wife of the deceased and all her adult children. The children of Mercy who are all minors were also listed. Prior to filing the petition at High Court in Nyeri Mercy served upon Mary a citation. Mary in response to that citation filed a replying affidavit sworn on 11<sup>th</sup> August 2010. By that replying affidavit, Mary denied that Mercy was the 2<sup>nd</sup> wife of the deceased. She also stated in the affidavit that she had not filed the succession herself by then because she was still in the process of collecting details of the deceased assets. Despite that deposition, Mary on the 12<sup>th</sup> August 2010, a day after swearing a replying affidavit, as stated above, came to this court and filed a petition in this succession cause. In petitioning for the grant of letters of administration intestate, Mary did not cite Mercy and nor did she list the name of Mercy and her children as persons who survived the deceased. Mercy now has moved this court by way of summons dated 24<sup>th</sup> January 2011 seeking leave of the court to extend time to her to file her objection to the petition for grant by Mary. I must say at this point that in my consideration of this matter, Mercy comes out as the more honest person than Mary. This is because when she petitioned for a grant in High Court at Nyeri, she first cited Mary and her children. Mary despite having the knowledge of that first petition at High Court Nyeri came to this court and petitioned for grant over the deceased estate and did not cite Mercy. I find that the Chamber Summons dated 24<sup>th</sup> January 2011 is merited and I grant the following orders:-

1. *That leave be and is hereby granted to Mercy Naitore Wangai to object to the petition by Mary Nyakeru Wangai out of time. To that end, the Nyeri High Court Succession Cause No. 677 of 2010 shall be deemed to be the objection by Mercy.*
2. *Mary Nyakeru Wangai is ordered to disclose any rental income or other income she is receiving from the estate of the deceased by an affidavit to be filed in this cause and served on Mercy Naitore Wangai within 15 days from this date hereof.*
3. *This cause is hereby consolidated with Nyeri High Court Succession Cause No. 677 of 2010. The lead file shall be High Court Meru Succession Cause No. 400 of 2010.*
4. *A mention date shall be given by the court at the reading of this ruling for the court to give further directions after the filing of an affidavit by Mary Nyakeru Wangai as per No. 2 above.*
5. *The costs of the Chamber Summons dated 24<sup>th</sup> January 2011 shall be in the cause.*

*Dated, signed and delivered at Meru this 17<sup>th</sup> day of March 2011.*

**MARY KASANGO**  
**JUDGE**