



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

SUCCESSION CAUSE NO. 169 OF 2003

**IN THE MATTER OF THE ESTATE OF FRED GEORGE NDERI
NGUU.....DECEASED**

AND

JANE WANGUI NDERI.....1ST PETITIONER

HERMAN MURITHI NDERI.....2ND PETITIONER

RULING

I have read carefully the contents of the entire file. The parties herein did on 14.10.2010 inform this court that they wished to proceed by way of affidavit evidence. I do respect their wish but I am inclined to believe that those directions were sought in ignorance. I say so because after reading the affidavits for and against the application for confirmation of grant, it is clear that the protestor is claiming to be the deceased's widow. Her affidavit does not have any annexures or other sufficient material to support her claim of marriage to the deceased. It is just an assertion she has made in her affidavit. That in my view is not sufficient evidence for her to prove her marital status or relationship to the deceased.

My considered view and in the interest of justice, I find that this is not a matter that can be properly and conclusively determined by way of affidavit evidence. I appreciate that both parties herein are unrepresented by counsel and they may not therefore have understood clearly the purport of proceeding by way of Affidavit evidence.

Kezia (protester) claims to be the widow to the deceased. He/she who asserts must prove. It is incumbent upon her therefore to prove her status or interest in the deceased's estate. I have noticed that the letter from the chief filed with the petition does not mention her or her children. She therefore has the onerous duty of proving before this court that she was indeed a wife to the deceased. Her 2 affidavits do not suffice to do so.

I therefore direct that this matter proceeds by way of *viva voce* evidence. If after this ruling is delivered Kezia still wishes to proceed by way of affidavit evidence, then the court cannot force her to do otherwise. I trust that this ruling will leave her better informed to enable her decide on how she wishes to proceed.

W.KARANJA
JUDGE

Signed by the above but delivered and dated by the undersigned at Embu this 17th day of March, 2011.

M. WARSAME
JUDGE