

SUCCESSION

· In all matters involving children, the interest of the child should be paramount.

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCC. CAUSE NO. 299 OF 2010

IN THE ESTATE OF THE LATE LUKE KIRIINYA CELESTINO (DECEASED)

REBECCA KINAITORE CELESTINO 1ST PETITIONER
MARY KAREMA MURIUKI 2ND PETITIONER

RULING

The petition in this succession was filed by Rebecca Kinaitore Celestine (Rebecca) jointly with Mary Karema Muriuki seeking for grant of letters of administration intestate. The only asset of the deceased estate is the death gratuity held by the Public Trustees Embu. Those who survived the deceased according to the P&A5 are Rebecca (mother of the deceased) and Edith Nkaimiri Kiriinya, daughter to the deceased. In the P&A form filed together with the petition, Edith was described as a 5 year old child. A grant was issued on 18th May 2010. By summons for confirmation dated 8th March 2011, the petitioners sought to have the death gratuity divided thus:- Rebecca Naitore Celestine and Mary Karema Muriuki getting 2/3, Edith Nkaimiri getting the balance. When the summons for confirmation came for hearing in the presence of the parties, I noted that Edith was a big girl and not a five year old child as stated in the P&A form. That raised my suspicion in this matter. I requested for confirmation of her age. It came by letter of a chief from Kirimene location dated 24th March 2011. That letter was signed by the chief by the name Francis Mwenda. By that letter, the said Francis Mwenda indicated that the deceased hailed from his location Kirimene sub location Giita village. In his letter, he confirmed that Edith was a 15 year old child. On 29th March 2011 when this matter was fixed for further hearing, Samson Bundi Rithara who said he was a chief of Munithu appeared in court. He too by his earlier letter dated 29th March 2010 claimed that the deceased hailed from his location. It is because of this discrepancies and because of the demonour of both petitioners that I formed an opinion that the petitioners cannot be trusted to use the deceased money for the benefit of the deceased child Edith or even to hold the money in trust. Having considered the issues raised in this ruling, I am of the view that the court needs an assistance to be able to reach a just decision. I therefore order that the children's officer of this court to carry out necessary investigations on the background of Edith the child to assist the court decide who would best be appointed as an administrator of her father's estate. I particularly wish to know whether the mother of Edith is still alive. In making that investigation the children's officer should bear in mind that the law requires that all decisions relating to children should regard the best interest of the child as paramount. This matter will be mentioned on 10th May 2011 when the court will receive the children's officers' report. The Deputy Registrar of this court is requested to facilitate the transmission of this ruling to the children's officer. In the meanwhile, I order that this file be kept in the strong room.

Dated, signed and delivered at Meru this 13th day of April 2011.

MARY KASANGO
JUDGE