



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO.193 OF 2009**  
**IN THE MATTER OF THE ESTATE OF CHARLES WAIHAKA MUIRURI (DECEASED)**

**RUTH GATHONI WAIHAKA**  
**SHARON REBBECA NUNGARI WAIHAKA..... PETITIONERS**  
**VERSUS**  
**JANE WAMBUI KAMBO.....OBJECTOR**

**R U L I N G**

Charles Waithaka Muiruri (the deceased) died on 12<sup>th</sup> November 2008. On 29<sup>th</sup> January 2009, Ruth Gathoni Waithaka and Sharon Rebecca Nungari Waithaka, widow and daughter respectively of the deceased, (the petitioners) petitioned this court to be granted letters of administration intestate in respect of the deceased's estate. In the said petition, the petitioners listed the dependants of the estate of the deceased as themselves and one Ivy Judith Nyamurwa Waithaka, another daughter of the deceased. When notice of the filing of the petition was published in the Kenya Gazette, Jane Wambui Kambo (the objector) lodged objection to the granting of letters of administration in respect of the deceased estate to the petitioner. The objector claimed that she was a widow to the deceased. She further alleged that during her cohabitation with the deceased, they were blessed with one child, namely S.N.W born on 15<sup>th</sup> February 2007. It was the objector's case that she too (together with her daughter) is a dependant of the estate of the deceased. To further establish her claim, the objector filed answer to the petition and also cross-petitioned to be granted letters of administration to administer the estate of the deceased.

Directions were taken before this court in regard to how the issues in dispute regarding the determination of who are the dependants of the estate of the deceased. Counsel for the disputing parties agreed that the issues in dispute would be determined based on the affidavits filed by the parties and by the written submissions that the said counsel would file. The written submissions were duly filed. The court gave an opportunity to the said counsel to ventilate the contents of the written submissions by making further oral submissions in court. This court has considered the submissions made on behalf of the petitioners and the objector. It has also considered the affidavits filed by the parties herein in support of their respective opposing positions. The issue for determination is whether the objector established that she was indeed married to the deceased prior to his death to entitle this court under **Section 3(5)** of the **Laws of Succession Act** to recognize the objector and her daughter as dependants of the deceased.

Some facts of this succession cause are not in dispute. The deceased married Ruth Gathoni Waithaka under the Marriage Act on 5<sup>th</sup> September 1982. The said marriage was therefore monogamous. The deceased and the said Ruth Gathoni Waithaka were blessed with two (2) children namely, Sharon Rebecca Nungari Waithaka who is now twenty one (21) years and Ivy Judith Nyamurwa Waithaka who is now eighteen (18) years. Ruth Gathoni Waithaka (Ruth) and her daughter Sharon Rebecca Nungari Waithaka are the petitioners in this cause. According to Ruth, she was not aware that the deceased had married the objector under Kikuyu customary law. In support of her contention, she attached a letter written by her mother-in-law (Rebekah Nungari Muiruri) in which she denies the claim by the objector that she was married to the deceased under the said Kikuyu customary law. On her part, the objector insisted that she was married to the deceased under Kikuyu customary law. She attached an affidavit allegedly sworn by Rebekah Nungari Muiruri which declares that the said Rebekah Nungari Muiruri recognized her as the second wife of the deceased. She further attached a letter written by the District Commissioner, Murang'a South which states that she was married to the deceased under the Kikuyu customary law. The objector further attached a copy of the birth certificate of a child known as S.N.W which identifies the deceased as the father of the child. It was the objector's case that she was married to the deceased under Kikuyu customary law and therefore she should be recognized as a widow of the deceased.

Upon evaluation of the facts of this succession cause, it was clear to the court that the objector failed to establish that she was indeed married to the deceased prior to his death. The objector claims that she was married to the deceased under Kikuyu customary law. No evidence was placed before the court that a marriage ceremony under Kikuyu customary law was ever celebrated. There is no evidence that dowry was paid to the parents of the objector by the deceased and members of his family. Although the mother of the deceased swore an affidavit acknowledging the objector as the second wife of the deceased, she

later wrote a letter disowning the objector. What is apparent to the court is that the objector placed no evidence before the court in form of a document by the deceased acknowledging the objector as the wife to the deceased. All the documents produced by the objector were generated after the death of deceased. This includes the letter written by the District Commissioner, Murang'a South. No evidence was placed before this court to establish the objector's claim that she cohabited with the deceased as husband and wife prior to his death. It was clear from the evidence adduced that the objector failed to establish that she had lived with the deceased for such a period that she could have established reputation in the society as the wife of the deceased.

In the premises therefore, having assessed the facts of this case, and the applicable law, it was clear to the court that the objector failed to establish, to the required standard of proof on a balance of probabilities that she was married to the deceased under Kikuyu customary law. She further failed to establish that she had lived with the deceased for such a long period of time that the court may presume that she was married to the deceased. Her objection to the grant of letters of administration to the deceased's estate being issued to the petitioners therefore lacks merit. The objection is disallowed. The objector's cross-petition is hereby dismissed. The objector and her daughter are not dependants of the deceased and cannot therefore be beneficiaries of his estate. The petitioners shall be at liberty to proceed to be granted letters of administration to administer the estate of the deceased. The objector shall pay to the petitioners the costs of these objection proceedings.

**DATED AT NAIROBI THIS 26<sup>TH</sup> DAY OF NOVEMBER, 2010**

**L. KIMARU**  
**JUDGE**