

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

Succession Cause 152 of 2005

IN THE MATTER OF THE ESTATE OF DUNCAN IKINYA NGAIRE.....DSD

AND

SICELY WANGECI IKINYA.....PETITIONER/APPLICANT

VERSUS

PRISCILLA WAINOI IKINYA.....OBJECTOR/RESPONDENT

RULING

I have heard the application dated 10/1/2006. The same is seeking for orders to dismiss the objection dated 15/12/2005 with costs. I have considered the grounds on the face of the application and the rival affidavits. I have considered the oral submissions by both counsel in court along with the applicable law. To start with, I note that the petitioner herein filed for probate with will annexed and annexed the deceased's will to her petition. The will appoints her and her sons and daughters as Executors/Executrix. The others have nonetheless renounced their right to be executors and left it to the petitioner herein. The objector is definitely not named as one of the Executors. She cannot therefore unless the Executors/Executrix named in the will accept, be appointed as an administrator. I appreciate that there was an oversight in that the court gazetted the cause as an intestate cause while the respondent had indeed completed the proper forms for probate. The gazette notice does not change the reality and substance of the petition. It is evident therefore that this objection is totally misplaced and unsustainably in law. Accordingly, I dismiss the same with costs to the petitioner/respondent.

W. KARANJA

JUDGE

20/5/2009

Delivered in open court at Embu this 20th May, 2009 in presence of the petitioner and her son.

W. KARANJA

JUDGE

20/5/2009