

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Succession Cause 598 of 2006

IN THE MATTER CHRISTOPHER KAGUMBA KARIAMBURI DECEASED

GLADYS WAMBUI KARIAMBURI

APPLICANT

Versus

PERIS WAIRIMU KAGUMBA & ANO RESPONDENT

RULING

There were two petitions filed in respect of this estate. The first in time was Succession Cause No. 429 of 2006 which was filed by Peris Wairimu Kagumba and Humprey Karuga Kagumba. The second one being Succession Cause No. 598 of 2006 was filed by Gladys Wambui Kariamburi. Peris Wairimu filed her succession cause as the widow of the deceased. Her coadministrator is the son of the deceased. An order was made in respect of her succession cause on 13th October 2006 for gazettelement. It does look like todate gazettelement has not been done. By an order of this court of 25th May 2007 the court ordered for the consolidation of both causes and Succession Cause No. 598 of 2006 was made the lead file. The Succession Cause No. 598 of 2006 was filed by the mother of the deceased. She has now moved this court by summons dated 1st November 2007 seeking for the setting aside of the order made in Succession Cause No. 429 of 2006 for gazettelement. In making that application she has stated that she has an equal right to the petition of grant in respect of this estate. The application was opposed. The counsel for the widow in opposing the application stated that the widow and the son had a greater right to have Letters of Administration issued to them. Counsel relied on *Section 35 and 39* in support of this argument. He stated that the mother of the deceased can only apply to be considered a dependant of the deceased but not to be an administrator. I have considered the application before me. In argument it became clear that the mother of the deceased in seeking to become an administrator seeks to get a share of the estate land which she alleges she is entitled to a portion of the same. Under *Section 66* of the Law of Succession Act this court has absolute discretion in whom to appoint as administrator of the estate. In exercise of that discretion and having regard to the argument placed before me I am of the view that the just decision would be to appoint the wife and the mother of the deceased to be joint administrators of this estate. The order of this court is that both petitioners, that is, Peris Wairimu Kagumba and Gladys Wambui Kariamburi be gazetted as administrators of this estate. There shall be no orders as to costs in respect of the summons dated 1st November 2007.

DATED AND DELIVERED THIS 29TH DAY OF JULY 2008

MARY KASANGO

JUDGE