

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Succession Cause 377 of 2004

NJOROGE..... DCD

AND

NJOROGE NJAGI PETITIONER

VERSUS

CATHERINE WANJIKU KIHARA..... APPLICANT

JUDGMENT

The respondent filed a petition in the lower court, namely Karatina SRM Succession Cause No. 67 of 2002 seeking the issuance of grant in respect of this estate. He filed that petition on the basis that he was the father of the deceased. Prior to petitioning he had obtained a letter from

the chief of Iria-ini location. The chief had confirmed that the deceased had died a bachelor with no children. In that letter the chief confirmed that the rightful heirs of that estate were the respondent, the father of the deceased and Elispa Gathigia Njoroge the mother of the deceased. That grant was issued to the respondent and was confirmed by that court on 14th January 2004. The only asset of the estate is death gratuity at the Teachers Service Commission. This judgment is in respect of the application by Catherine Wanjiku Kihara seeking for the revocation of that grant. In the affidavit in support of the application and in the further affidavit the applicant stated that she co-habited with the deceased as his wife for three years. Out of that relationship they were blessed with one child Lincoln Kihara who was born on 8th February 1997. She stated in her affidavit that both she and the child were dependants of the deceased. In the further affidavit the applicant annexed

correspondences which acknowledge her as the wife of the deceased. She also annexed the eulogy of the deceased

which stated that she was the wife of the deceased and their son was stated to be Lincoln Kihara. Annexed to the affidavit was evidence of the payment to the applicant by Mwalimu Co-operative Savings & Credit Society Ltd and by British American Insurance Company. These payments related to the estate of the deceased. The respondent in his affidavit in reply denied the averments of the applicant in her affidavits. The respondent stated that the deceased died as a bachelor and that he being the father was the next of kin and was best suited to administer the estate. I have considered the affidavit evidence brought before me. I find that there is ample evidence to show that the applicant was co-habiting with the deceased. It is also clear from the evidence before that that relationship produced the child Lincoln Kihara. That being the case I find that the applicant

has proved on a balance of probability that the grant issued to the respondent ought to be revoked. The judgment of this court is as follows:-

1. That the grant issued to Njoroge Njagi in respect of this estate in SRM's Succession Cause No. 67 of 2002 issued on 7th February 2003 is hereby revoked.

2. *That a grant is hereby issued in respect of this estate to Catherine Wanjiku Kihara.*
3. *Leave is hereby granted for that grant to be confirmed before the expiry of 6 months.*
4. *The applicant is granted costs of the summons dated 17th February 2004.*

Dated and delivered at Nyeri this 23rd day of September 2008.

MARY KASANGO

JUDGE