



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 1615 of 2004

IN THE MATTER OF THE ESTATE OF ESTHER NJOKI NG'ANG'A (DECEASED)

AND

IN THE MATTER OF

SAMMY MUTHEE )

ANN WANJIRU )..... OBJECTORS/APPLICANTS

versus

STEPHEN NG'ANG'A MUTHEE ..... PETITIONER/RESPONDENT

RULING

Esther Njoki Ng'ang'a ('Esther') died on 14<sup>th</sup> May, 2003 at the age of 60 years. I shall now refer to her as 'the deceased'. Her daughter **Nancy Wanjiru Muthee** ('Nancy') had predeceased her and she was survived by only one son namely **Stephen Ng'ang'a Muthee** ('Stephen').

On 2/6/2004, one **Sammy Muthee** ('Sammy') who claimed to be a grandson of the deceased and thus Stephen's nephew issued a citation to Stephen. He did so in his capacity as a beneficiary of Esther's estate. Stephen was by virtue of the citation required to "*accept or refuse letters of administration of all the estate which by law devolves to and rests in the personal representatives of the deceased and to show why the same should not be granted to Sammy Muthee*". He was thereby notified that "*in default, the Court may grant Letters of Administration of the said estate to the said Sammy Muthee*". The notice would expire on the 15<sup>th</sup> day of service. He was served on 7/6/2004.

Stephen entered appearance through the firm of B.A. Ouma and Advocates, on 21/6/2004.

On 6/10/2005 Sammy and his sister **Anne Wanjiku** ('Anne') proceeded to petition for Letters of Administration of the Estate of their grandmother who died Intestate in which they named their siblings **Catherine Njoki** and **Rose Waithiga** as the other beneficiaries.

Stephen then lodged his petition on 10/1/2006 and a gazette notice was issued in his favour on 24/2/2006 vide Notice No. 1265.

Being aggrieved by the turn of event, Sammy Muthee and his sister Anne Wanjiku have now raised an objection to the making of the grant to Stephen on the grounds that though they were beneficiaries of the deceased, they were not catered for. They also allege fraud on Stephen's part. Sammy has deposed to the effect that they had agreed on the mode of distribution of the estate of the deceased, which agreement Stephen had reneged.

The two who I shall now refer to as the applicants, have failed to provide proof that they were dependants of the deceased, needless to say having predeceased Esther the applicants can not claim that their mother survived Esther.

Furthermore being the only surviving child of Esther Stephen had priority to obtain letters to administer his mother's estate, as provided for in section 29 (a) of the Succession Act, and in the circumstances, the issue of fraud cannot lie.

This application lacks in merit. I dismiss it with costs.

Dated and delivered at Nairobi this 15<sup>th</sup> day of October 2008.

**JEANNE GACHECHE**

**Judge**

Delivered in the presence of: