

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 1882 of 2003

IN THE MATTER OF THE ESTATE OF ELIUD MATHU KARUGA (DECEASED)

RULING

ANNA WANGUI MATHU and JANE MUTHONI MATHU who are the administrators of the estate of the late ELIUD MATHU KARUGA now seek an order to have the grant, which was issued to them on 2/9/2003 confirmed.

Though the deceased, who died on 2/9/2001, had five daughters and a son, only four daughters survived him. Their mother had predeceased the deceased in this cause. His late son's wife and one SAMSON KARUGA WANJIRU who is a son to his daughter also appear on the list of those who survived the deceased.

ELIUD MATHU KAMAU ('Kamau') who is also a grandson of the deceased has raised an objection to the application by the two administrators on the basis of the grounds that

He has had one JOSHUA IRUNGU ELIJAH depose how the deceased had invited him to his house on 20/5/1999 for the purposes of witnessing his will which he did by signing, which he did, and so did a second witness. Though the deponent deposes that he read the will and understood its contents he does not depose when and whether the donor actually signed the will. In my humble opinion, one can only be witness if he was present and only if he witnessed the donor affix his signature to the will. That omission is in my view a serious omission which renders the will invalid for want of authentication, and in the circumstances Kamau's ground that he was a beneficiary under the will cannot lie.

I have also taken into account the fact that Kamau is the son of GRACE WANJIKU KAMAU, the deceased's daughter in law who stands to benefit from the estate. He should inherit through his mother.

, was duly served with a hearing notice, he did not appear in court to present his case, and the matter proceeded in his absence.

I have nevertheless considered the application for confirmation as well as Eliud's concerns and

HAD RAISED AN OBJECTION amau objects to the said confirmation vide his affidavit of 12th July, 2004.

The objector is a grandson to the deceased. His mother is alive and she has been catered for under paragraph 3(b) (Grace Wanjiku Kamau). If his application is allowed he will dis-inherit his mother and siblings. The existence of the will is denied by the applicants.

We pray for confirmation of grant of 2nd September 2003.

Dated and delivered at Nairobi this 13th day of November 2008.

JEANNE GACHECHE

Judge

Delivered in the presence of: