



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**SUCCESSION 167 OF OF 2004**

**IN THE MATTER OF THE ESTATE OF STEPHEN PETER KAGECHE MUNGAI.....  
(DECEASED)**

**JANET WANGUI KAGECHE.....PETITIONER**

**VERSUS**

**BENDELE GACHIRI KAMAU.....PROTESTOR**

**RULING**

This is a Succession Suit in which the administrator applied for confirmation of grant of the estate of deceased Stephen Peter Kageche Mungai who died on 5/6/2004.

Bendele Gachiri Kariuki Kamau has filed a protest against the confirmation of the grant on the ground that he claims from the estate a sum of Shs.160,100/= he had but to the deceased during his life time.

The protest was set down for hearing when parties gave evidence saying that he lent to the deceased 160,100/= as is shown in exhibit No. 1 (a note book in which several pages are torn off and the only writing is the alleged acknowledgment dated 22.7.2003 purportedly signed by the deceased less than one month before his death. Three days later after his death the protestor confronted the widow (administrator) with his claim but the widow said she would discuss the matter after burial of deceased. The administrator never paid the money and on 7/7/2005 the protestor engaged an advocate to claim the money for him. See exhibit P. No. 2. In cross-examination the protestor admitted not to have told the widow of the debt because he thought her husband had told her about it. Protestor's witness, PW2 testified that he was asked by protestor to accompany him to the home of deceased. They were entertained and the note book was shown to the family and they asked for time to pay. This evidence contradicts that of protestor. That was the evidence for protestor.

The Administrator herself gave evidence and testified that the first time she met protestor is when he came home after the death of her husband and she added that if the debt is proved she will pay. She testified that she had no knowledge of the debt. On cross examination she admitted that the writing in the note book was of her husband and the signature also. But she said she wanted evidence. She said she admitted the debt but did not know how much it was. She also said she did not know that the protestor financed the case in Kiambu. From the evidence adduced by parties, the administrator admits that the acknowledgement of debt Exh 1 A written in the note book was of her deceased husband. She identified the signature affixed therein as that of her husband.

The protestor explained how the debt was being recorded in the Notebook so that only the balance was shown in the Notebook. Since the Administrator admitted the handwriting and the signature of her husband deceased. I find what is written there to be proved. The administrator also in cross-examination said the case in Kiambu was taken up by her husband because mother was very old, she could not attend the proceedings.

It is my finding that the protesters claim is proved and I order the administrator out of the estate of deceased to pay out to the protestor shs.160,100/= as claimed together with costs of this suit. The application for confirmation of grant is now allowed subject to payment of this claim.

Orders accordingly

20<sup>th</sup> April2007

**J.N. KHAMINWA**

**JUDGE**