

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CASE 361 OF 1999

IN THE MATTER OF THE ESTATE OF JOHN CHIIRA KAHUTHU alias CHIIRA KAHUTHU
(DECEASED)

AND

WANGU CHIIRAPETITIONER

RULING

On 9th August, 1999, the petitioner commenced these proceedings seeking to be appointed the sole administrator of the estate of one, John Chiira Kahuthu alias Chiira Kahuthu deceased who had passed on sometimes on 22nd May, 1999. When Esther Gakui Chiira, a co-wife to the petitioner got wind of the proceedings, she filed an answer to the petition and conterminously cross-petitioned for the grant of the letters of administration. On 2nd September, 1999, **Esther Gakui Chiira** hereinafter referred to as “the objector” filed a notice of objection to the making of the grant pursuant to Rule 17 (1) of the Probate and Administration Rules. Subsequent thereto directions were given as to the manner the succession cause should be heard and disposed off. It was **Justice J.V.O. Juma** (as he then was) on 12th may, 2000 who directed that “.....**The determination in regard to distribution of the estate shall be dealt with by viva voce evidence on a date to be obtained at the registry.**”

On 26th June, 2002, the hearing of the cause commenced before **Justice Mitey** (as he then was) with the objector and two other witnesses testifying. The matter was then adjourned and it was not until 11th May, 2006 that the cause again came up for further hearing. By this time, **Justice Mitey** had left the bench. Accordingly **Justice Khamoni** before whom the matter had been listed directed that the hearing of the objection do proceed from where **Justice Mitey** had stopped. However the proceedings would have to be typed first.

The proceedings were duly typed and the matter was thereafter fixed before me for hearing. On 23rd may, 2007 the matter came up for further hearing. As the objector had already closed her case, it was the turn of the petitioner to state her case. However though served with the hearing notice in good time, the petitioner for unexplained reason(s) failed to turn up for the hearing of the cause. As I was satisfied that the petitioner was properly served with the hearing notice going by the affidavit of service on record, I directed that the cause do proceed to hearing, the absence of the petitioner notwithstanding.

Mr. Kamwenji, counsel for the objector submitted that since the petitioner was absent and the objection arose from her petition after she had failed to include some of the beneficiaries in the list of beneficiaries and had also failed to inform and consult the objector who is her co-wife before commencing the succession cause the court should proceed and determine the cause on the evidence on record and make the petitioner as well as the objector co-administrators of the deceased estate.

I have now considered the petition as well as the objection and the various affidavits in support of the petition and the objection and the annexures thereto. I have also carefully analysed and evaluated the evidence tendered by the objector, PW1, **Ngari Njogu** and PW2, **Francis Kithethinji**. There is no doubt at all that the objector was the first wife of the deceased and therefore a co-wife to the petitioner. The evidence of PW1 & PW2 is very clear on this issue. The said evidence was neither challenged nor controverted. There is nothing on record to suggest that these two witnesses were not worthy of believe.

They were all cross-examined by the petitioner and were not found guilty for want of candour. I also note that by the letter dated 22nd August 1999, the Chief of Iriaini location, **Duncan Kariithi Mbaru** confirmed that both the petitioner and the objector were the wives of the deceased. That being the case, the petitioner should not have commenced the succession proceedings without involving the objector and or consulting her. The petitioner should at least have sought and obtained a consent from the objector if she was not interested in petitioning herself for the grant of letters of administration.

As no other evidence has been placed before me that would suggest that the objector was not entitled to administer the estate, I would on the material before me uphold the objection and direct that the estate of the deceased shall jointly be administered by the petitioner as well as the objector. Accordingly letters of administration of the estate of the deceased shall be issued in the joint names of the petitioner and the objector; that is to say **Wangu Ciira** and **Esther Gakui Ciira**. Costs shall be however in the cause.

Dated and delivered at Nyeri this 26th June 2007.

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M.S.A. MAKHANDIA

JUDGE