

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Succession Cause 41 of 2004

IN THE MATTER OF THE ESTATE OF SOSPETER NDIRITU MUTURI (DECEASED)

HIUHU MUTURI.....PETITIONER

Versus

LOISE KARURA NDIRITU.....OBJECTOR

JUDGEMENT

An objection in this succession cause was filed by Rose Karura Ndiritu. She objected to the grant being issued to Hiuhu Muturi. The court ordered that that objection be heard by way of written submissions. When the matter came up before court on 11th July 2007, the Objector had filed her submissions. The Petitioner Hiuhu Muturi who was in person had not filed his submissions and he was given seven days to file them. To-date he has not filed those submissions. The Petitioner in petitioning for the grant described himself as the son of the deceased. The Objector in her objection said that the Petitioner was not the son of the deceased but that he was a brother. She was not aware that the Petitioner had so described himself in his petition. She therefore concluded that he wanted to get Letters of Administration by using fraudulent means. The Objector Rose Karura Ndiritu described herself as the widow of the Deceased. Her children with the deceased are Lucy Wangari Ndirangu, Roseline Wakarindi Mwaura, Jackson Kamau Ndiritu and Joyce Wangui Ndiritu.

Section 66 of the Law of Succession Act gives the court the final discretion in deciding to whom the Grant of Administration shall be given. Without prejudice to that discretion the court is to be guided by the following order of preference; surviving spouse with or without other beneficiaries and secondly other beneficiaries entitled intestacy. The other groups that can be considered is public trustees and creditors. Since the Petitioner did not file his submissions in this matter the court takes it that he does not deny that he is not the son of the deceased as he described himself. Accordingly the objection raised by the widow of the deceased is merited and the order of this court is that the Petition filed herein by Hiuhu Muturi is hereby struck out and the court hereby orders that a grant be issued to the Objector Rose Karura Ndiritu in respect of this estate. The Objector is granted costs of the objection proceedings.

Dated and delivered at Nyeri this 2nd day of October 2007.

MARY KASANGO

JUDGE