



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 75 OF 2000

**GLADYS REGERIA NJIRU.....APPLICANT**

**VERSUS**

**SILAS MBAYA M'MUKINDIA.....PETITIONER/RESPONDENT**

**R U L I N G**

In this cause the Applicant's mother, Monicah Muthoni M'Mukindia, was the objector while the petitioner was the Respondent herein, Silas Mbaya M'Mukindia. The applicant's mother was the wife of the deceased. The Respondent herein is step-sister to the applicant and was a step-son to applicant's mother. Applicant's mother, Monicah Muthoni filed an objection to the petition filed by the Respondent herein claiming that the Respondent had deliberately excluded her from the estate of her own husband. It would appear that the dispute on the distribution of the estate, was by consent, referred to the District Officers elders' tribunal. The arbitration tribunal made a finding which was accepted and read by this court. It gave portion of land part of the estate of the deceased to the Applicant's mother, Monicah Muthoni. The problem appears to have started when the Respondent failed to accept the recommendations of the District Officer's elders tribunal which granted Monicah ¼ an acre of the land the subject of dispute. Petitioner, the Respondent herein, filed an objection to set aside the D.O's award. That appears to be the time when the objector, Monicah died. Now her daughter applies to be joined in her mother's place to conclude the cause and settle the distribution through the court. This application is however opposed by petitioner on the main ground that the Applicant has no proprietary interest to protect in the cause in which, according to him, the Applicant is, in any case, a party as a beneficiary whose interests are sufficiently protected.

I have carefully considered the application through the material and arguments before me. I have come to the conclusion that whether or not the Applicant is a beneficiary and has thus her rights taken care of if at all, she has a right to be joined in her mother's place as an objector per se, to protect the objector's rights. This is much so especially since there is a pending award from the District Officer's elders tribunal which substantively awards the Applicant's mother, ¼ of an acre of the disputed estate land. It would be entirely improper to deny a citizen a right to access this court of law to seek for justice.

The end result accordingly, is that this application is meritorious. The applicant is hereby joined as the representative of her mother and as the objector in this succession suit forthwith. The court with dismay, observes that the petitioner has persistently trodden upon the interim orders of this court in relation to the preservation of parties' rights touching this matter. This is a warning that unless he rescinds his wrongful conducts and makes good the offences he has committed against the court and the other parties, this court will not hesitate to take corrective measures within the next 15 days.

The applicant is given the liberty to apply if no corrective measures are taken by the Petitioner within the prescribed period. The costs of this application are in the cause.

**Dated and delivered at Meru this 14th day of April, 2005**

**D. A. ONYANCHA**  
JUDGE