



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE 3048 OF 2004**

**IN THE MATTER OF THE ESTATE OF LEONORAH NANJALA KUBASALI**

**(DECEASED)**

**BETWEEN**

**1. DAVID N. NAMBAFU**

**2. RUTH MUCHUNGI .....PETITIONERS/APPLICANTS**

**Versus**

**1. PATRICK WANYONYI KUBASALI**

**2. HUMPHREY WANYAMA KHISA .....OBJECTORS/RESPONDENTS**

**RULING**

A petition for Grant of Letters of Administration, intestate, to the estate of the late Leonora Nanjala Kubasali (deceased) was filed by David J Nambafu and Ruth Muchungi, described in form P&A 80 as “Husband and sister to the deceased”. The petition is dated 14th October, 2004.

The deceased’s brother and cousin, i.e. Patrick Wanyonyi Kubasali and Humphrey Wanyama Khisa, respectively, filed “**Objection to the Making of a Grant,**” to the deceased’s estate on 6th December, 2004. No date for the hearing of this objection was taken, and on 29th March, 2005, the petitioners who had now instructed a Kitale advocate Messrs Wanyama C.S & Co. Advocates moved the court for an order to transfer this Succession cause to Kitale High Court, giving the reason that it will be expensive to transport and accommodate witnesses from Kitale to Nairobi for the hearing, as the petitioners had not anticipated any objection to their petition.

The objectors have opposed the application for transfer stating inter alia, that the petitioners freely filed the Cause in Nairobi and gave their Nairobi addresses, and further, that the deceased lived and worked in Nairobi during her life time, and her 3 children too, lived with her in Nairobi.

The objectors seem to have 2 main reasons for coming to the estate at this time, according to their replying affidavit opposing the application for transfer. They say:-

**1. “The deliberate misrepresentation made to the court that Ruth Muchungi (hereinafter called Ruth), was a sister to the deceased, and**

**2. “the concern by the objectors that the only son to the deceased namely Brian Wafula, stood the high risk of being disinherited by David J. Nambafu (hereinafter called David) who is his step father.”**

Brief oral submissions were made by both advocates, who also filed detailed submissions by consent, on this matter of “transfer”.

I have read and considered all submissions, and I have the following to say:-

(1) First and foremost, the only point for determination in this cause at this point is, who is entitled to apply for a Grant of Letters of Administration, intestate, to the estate of the deceased? **Is it David the husband jointly with his sister Ruth, or the objectors, or all four of them?**

(2) The objectors do not challenge David as having been a husband to the deceased, but they appear to be opposed to Ruth who as I have already pointed out, is described in the petitioner as “sister to the deceased”.

In court during the hearing of the application, Mrs. Wanyama, for the petitioners described Ruth as a sister of David, and not the deceased’s sister. This is what the objectors are opposed to, and describe as “misrepresentation”.

The second concern raised by the objectors whilst opposing the application for transfer touches on “the substance of the petition”, i.e. whether the deceased’s son Brian Wafula, will be disinherited, by the deceased’s husband David who was not Brian’s biological father, and who, according to the objectors, showed open hostility to Brian, during the deceased’s life time.

I find that this second concern cannot be addressed at this point because no Grant to the deceased estate has been issued. It is when such a Grant is issued and the same comes up for confirmation that the court has to FIRST determine “the identities and shares of those beneficially entitled”. See proviso to Section 71 of the Succession Act, Cap 160, Laws of Kenya.

Having considered what the objectors have said in opposing the application for transfer, I must at the same time say that the reasons given by the petitioners to support the transfer appear “credible” on the face of the record, i.e. the matter of witnesses having to travel to Nairobi from Kitale, when there is a High Court in Kitale.

Taking all factors into consideration, I am of the considered view that the application for transfer coming at this stage before the “objection to the Making of a Grant,” filed in December 2004 is heard and disposed of is “ill-timed”, to say the least.

The objectors should have moved the court for a date to have their objection heard and determined since it was filed. Six months have gone by with no action on their part. This, I must say is not satisfactory, in the circumstances.

Having said the above, I nevertheless refuse to grant an order to transfer this Succession Cause to Kitale at this stage, but direct the objectors to have their objection heard and determined as soon as possible. The application to transfer the cause to Kitale High Court can be renewed at a later date after this court has decided to whom a Grant to the deceased’s estate should be issued, taking into consideration all factors. The distribution of the estate might be contentious and this is what may call for evidence by witnesses said to be living in Kitale. That stage has not arrived yet.

I have decided that the costs of the application for transfer shall be awarded to the objectors.

**Dated at Nairobi this 14th day of July 2005.**

**JOYCE ALUOCH**

**JUDGE**