



**Gatimu & another v Muruthi (Succession Cause 1665 of 2003)  
[2004] KEHC 2314 (KLR) (Family) (26 March 2004) (Ruling)**

*IRENE WAITHIRA GATIMU vs WINFRED WANJIRU MURUTHI[2004] eKLR*

Neutral citation: [2004] KEHC 2314 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**SUCCESSION CAUSE 1665 OF 2003**

**MK KOOME, J**

**MARCH 26, 2004**

**BETWEEN**

**MARGARET NYOKABI GATIMU ..... 1<sup>ST</sup> APPLICANT**

**IRENE WAITHIRA GATIMU ..... 2<sup>ND</sup> APPLICANT**

**AND**

**WINFRED WANJIRU MURUTHI ..... RESPONDENT**

**RULING**

1. This Summons brought under Rule 44 of the *P & A rules* by the petitioner seeks for orders that
  - 1) That the objection lodged by Winfred Wanjiru Muriithi be struck out for want of prosecution
  - 2) The grant of Letters of Administration intestate be made to the petitioners
2. The application is supported by the affidavit of the 1st petitioner. The gist of the matter deponed to in the said affidavit can be summarized as follows:

The petitioner's are the widow and daughter of the deceased respectively. They are entitled in the order of priority to be issued with the Letters of Administration. The objector herein filed an objection on 4th September 2003. The objection is based on the grounds that;

  - i) The widow of the deceased has refused to recognize her as a rightful buyer of plot No.15 which she was purchasing from the deceased.
  - ii) She is apprehensive that the widow might sell the plot if granted the letters of Administration.



2. In opposition to this application the objector also filed a replying affidavit sworn on 4th December 2003. She has deponed that she purchased plot No. 15 of LR No. 473 registered with Jitahidi Development Company Ltd. where the deceased was a Director. The objector was not issued with a Title and therefore if the petitioners are issued with the Letters of Administration she will suffer irreparable loss.
3. I have given due consideration to this objection and the matters raised in the objector's supporting affidavit. The property which the objector is claiming is not in the schedule of Assets of the deceased. It is registered in a name of a company Jitahidi Development Co. a Limited Liability Company that has other Directors and is capable of being sued. The deceased was one of the Directors. The objector being a creditor has two options either to
  - 1) File a Civil Suit against the Jitahidi Development Co.
  - 2) Pursue the petitioners in a Civil Suit once they have been issued with Letters of Administration.
4. Since she is neither a beneficiary or heir to the deceased estate her claim is outside the Law of Succession and all the petitioners could do is recognize her as a creditor if they are satisfied that she is one.
5. Accordingly the objection is struck out as being incompetent as the person having priority in this respect and according to section 66 of the Law of Succession is the deceased spouse and her children.  
The petitioner should be granted the Letters of Administration. Each party shall bear their own costs.  
It is so ordered.

**RULING READ AND SIGNED ON 26TH MARCH 2004.**

**MARTHA KOOME**

**JUDGE**

