



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO. 1664 OF 2004**

IN THE MATTER OF THE ESTATE OF JERUSHA WANJIRU KINUTHIA

**RULING**

The applicant in this Summons, Sheila Wanjiku Kairu is one of the beneficiaries of the estate of Jerusa Wanjiru Kinuthia (deceased who died on 18th May 2004).

This application is brought under Section 7 of the Public Trustee Act, which Section authorizes this court where the particular circumstances of the case so require and for reasons to be recorded, the Public Trustee can be appointed as the Administrator of the deceased estate.

The application is supported by the applicant's affidavit. The matters deposed to in the affidavit can be summarized as follows:

1. At the time the deceased met her death, she left many assets and some properties that are income generating.
2. The deceased was survived by the following beneficiaries.
  - a) Irene Njoki Kinuthia
  - b) Margaret Wambui Kinuthia
  - c) Victor Muthee Kinuthia
  - d) Roselyn Gachigi Kinuthia
  - e) Sheila Wanjiku Kairu
  - f) Antony Wangai Kinuthia
3. All the deceased daughters are residents in the United States of America and it is only the two sons one of whom is a minor are residents in Kenya. The applicant is apprehensive that the elder brother Victor Muthee Kinuthia who has been managing the properties of the estate during the life time of the deceased and even fraudulently transferred properties with forged signature will continue to do so, to the detriment of the other beneficiaries especially the last son who is a minor. The applicant therefore sought for an order that the Public Trustee be granted with the Letters of Administration to administrator the estate of the deceased.

This application was served upon the Public Trustee who entered an appearance and maintained a neutral position in the matter. However the Public Trustee has no objection if appointed by this court as the Sole Administrator or Co-administrator with the other parties.

The other beneficiaries were served and the following four (4) beneficiaries were represented by the

firm of Kibatia & Co. Advocates, Victor Muthee Kinuthia, Irene Njoki Kinuthia, Margaret Wambui Kinuthia and Roslyne Gachigi Kinuthia.

These beneficiaries filed their Replying Affidavits in opposition to the orders sought by the applicant. The gist of the matter deposed to in their affidavits can be summarized as follows:

Firstly, Victor Muthee denies vehemently that he has mismanaged the estate or he has undertaken any fraudulent transfer. Indeed the transfer complained about was duly executed by their late father prior to his death. That is when the Land Control Board consent was obtained but the transfer was affected after his death.

Secondly all the beneficiaries had held a meeting immediately after the death of the deceased and resolved that two of them namely:

Victor Muthee Kinuthia and Roselyn Gachigi Kinuthia do become the administrators of the deceased estate. Roselyn Gachigi has duly indicated her willingness to act as such, and they are in the process of filing the requisite petition for Letter of Administration.

Thirdly, the beneficiaries argued that there is no evidence to show that Victor Muthee Kinuthia is unsuitable person to be appointed as an Administrator. There is no evidence of fraud and the material placed before the court to show the disagreements between the deceased and Victor are normal family feuds that exist in almost all average families. These quarrels cannot be used to disentitle the beneficiaries who have priority over the Public Trustee to be appointed as an Administrator.

I have given due consideration to the issues raised in this application. I am of the humble view that this application is premature and ought to be made in the substantive petition where the Letters of Administration or Probate shall be applied. In that case the court will be able to make elaborate enquiries as to the suitability of the Administrators of the estate. It is difficult at this stage to determine who should be appointed as administrator based on affidavit evidence that contains accusations and counter accusations and based on the applicant's perceived apprehension.

Section 7 of the Public Trustee Act clearly provides that

**“Where the particular circumstances of any case appear to the court so to require, the court may, if it thinks fit for reasons recorded in its proceedings, of its own motion or otherwise, after having heard the Public Trustee, grant under the Law of Succession Act Letters of Administration to the Public Trustee notwithstanding that there are persons who, under that Act or any other written Law, would in ordinary course be legally entitled to administer the estate of the deceased person concerned in preference to the Public Trustee.”**

This section of the law requires that the court be guided by special circumstances. The special circumstances are that Victor Muthee Kinuthia, the only qualified beneficiary who is resident in this country is not suitable to be appointed as an administrator. Secondly the applicant and other beneficiaries who are of age are residents of the United States of America.

In regard to the first circumstance, I have already indicated that the material before me is not adequate to enable this court make an adequate evaluation of the suitability of Victor Muthee. It is clear from the supporting Affidavits of the other beneficiaries that despite the quarrels or disagreements with the deceased he enjoys the overwhelming support of the other beneficiaries. I agree with counsel for the applicant that Section 66 of the Law of Succession has clearly stipulated the order of priority when dealing with the Administration of an intestate estate.

As regards the second circumstance, the applicant's apprehension is based on the fact that she and other beneficiaries are residents of the U.S.A. They are not within the country to administer the estate and she cannot trust her brother who is resident in the country and who is likely to be appointed as an administrator. This second circumstance is also self serving as far as the applicant is concerned. I believe she can make a choice to stay in this country and apply for the Letter of Administration and her suitability can be evaluated alongside that of Victor Muthee Kinuthia.

In view of the above, I find the application premature and dismiss the same with costs to the respondent the Public Trustee. The other beneficiaries to bear their own costs this being a family matter.

It is so ordered.

Ruling read and signed on 23rd July, 2004.

**MARTHA KOOME**

**JUDGE**