



**In re Estate of Eliud Wanjoga Mucheru (Deceased) (Succession Cause E2214 & E1967 of 2021 (Consolidated)) [2023] KEHC 24440 (KLR) (Family) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 24440 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE E2214 & E1967 OF 2021 (CONSOLIDATED)  
EKO OGOLA, J  
SEPTEMBER 21, 2023  
IN THE MATTER OF THE ESTATE OF ELIUD WANJOGA MUCHERU (DECEASED)**

**BETWEEN**

**PHYLLIS WANJIKU WANJOGA ..... PETITIONER**

**AND**

**TABITHA WANJIRU KAMAU ..... CROSS PETITIONER**

**RULING**

1. What is before this Court is a Petition for letters of administration intestate for the estate of the late Eliud Wanjoga Mucheru dated 1<sup>st</sup> November 2022. The Petitioner prays to be appointed as the administrator of the estate since she is the surviving widow of the deceased.
2. The cross-petitioner filed a citation No. E1967 of 2021 dated 28<sup>th</sup> September 2021. She further filed a cross-petition dated 13<sup>th</sup> May 2022 accompanied by an Affidavit of Protest sworn on even dates. The cross-petitioner's case is that she has been cohabiting with the deceased from the year 1990.
3. The parties attempted to file a joint petition for letters of administration intestate, but parties were unable to come to a consensus. The court directed to counsel to canvass the matter by way of written submissions.

**Determination**

4. I have considered the pleadings as filed, the rival submissions of the counsels and the entire record of the Court.
5. Eliud Wanjoga Mucheru (deceased) died intestate on 21<sup>st</sup> July 2021. The Petitioner stated that she is the deceased surviving widow having celebrated their marriage on 6<sup>th</sup> January 1973 vide a church wedding



at the Presbyterian Church of East Africa. From their marriage, they bore two daughters; Mary Njeri Wanjoga and Esther Ngonyo Wanjoga.

6. The cross-petitioner's case is that she is also a surviving widow of the deceased, having been married under Kikuyu customary law. From the marriage, they bore two children, Simon Ngochi Wanjiru and Rachael Wanjiku Wanjiru.
7. From the submissions of counsel of the Petitioner, the cross-petitioner was not a wife to the deceased within the meaning of the *Marriage Act*, 2014. It was argued that there was no presumption of marriage as the deceased lacked the legal capacity to marry since he was already married to the petitioner. Counsel submitted that the cross-petitioner did not provide any evidence of having cohabited with the deceased.
8. On the other hand, counsel to the cross-petitioner argued that the cross-petitioner was married to the deceased under Kikuyu customary law.
9. What is on record is a photograph of the petitioner and the cross-petitioner laying a wreath at the deceased funeral. This photograph has not been contested. There is also a handwritten agreement letter from the petitioner and cross-petitioner to the Gechege tea factory on the temporary allocation of tea bushes between the parties. Additionally, there is a letter from the Chief Gakoe Location to Gachege Tea Factory referring to the said agreement. Further to this, both parties annexed to their pleadings a copy of a letter from the Chief of Gakoe Location stating that the deceased was survived by two widows and four children. Two of the children Simon Ngochi Wanjiru and Rachel Wanjiku Wanjiru were born out of the relationship between the deceased and the cross petitioner.
10. The provisions of Section 66 of the *Law of Succession Act* set out the priority of certain persons to administer the estate of an intestate deceased person as follows:-

“when a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference:-

- a) Surviving spouse or spouses, with or without association of other beneficiaries;
- b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interest as provided by Part V;
- c) The Public Trustee; and
- d) Creditors

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.”

11. Appointment of an administrator to the deceased estate is a matter of discretion of the Court under Section 66. Like all other discretions, the discretion of the court to appoint administrators of the intestate must not be exercised whimsically but upon defined legal principles and in accordance with the circumstances of each case. Accordingly, the important factor to consider in the exercise of this discretion is the best interest of all the parties concerned, taking the circumstances of the case into account.
12. From the foregoing, it cannot be said that the cross-petitioner and her two children are unknown to the petitioner. If they were indeed strangers, the cross-petitioner would not be present during the deceased



funeral. Also, counsel to the petitioner would not have written to the cross-petitioner a demand letter alleging intermeddling with the deceased estate. Further to this, the area chief in his letters states that the cross-petitioner was the wife of the deceased. Clearly, the cross-petitioner and her children were not strangers to the deceased, to the petitioner or to the people of Gakoe Location.

13. Upon careful consideration of the entire circumstances of this case, it is important to consider that the petitioner and her children and the cross-petitioner and her children are entitled to a share in the estate. Thus, for purposes of appointment of administrators, both applicants are concerned parties in this estate. Therefore, on the basis of the above realities, the best interest of all the parties concerned commends that I appoint both parties as joint administrators of the estate of the deceased. I accordingly appoint the petitioner and the cross-petitioner as joint administrators of the estate of Eliud Wanjoga Mucheru (deceased) and the grant of letters of administration intestate herein shall be accordingly issued in their joint names.
14. In view of these orders, each party shall bear their own costs of these proceedings.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF SEPTEMBER 2023**

.....

**E.K. OGOLA**

**JUDGE**

In the presence of:

Mr. Muganda for the Petitioner

Mary Muigai for the Petitioner

Mr. Kamau for the Cross-petitioner

Gisiele Muthoni - Court Assistant

