



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 3380 OF 2014**

**IN THE MATTER OF THE ESTATE OF SAMUEL MBUGUA GATHERU (DECEASED)**

**MARY MUKAMI MBUGUA.....APPLICANT**

**RULING**

1. The deceased Samuel Mbugua Gatheru died intestate on 20<sup>th</sup> January 2006. He left a widow Margaret Njeri Mbugua and 12 children. A grant of letters of administration intestate were issued to the widow on 5<sup>th</sup> October 2016, and confirmed on 13<sup>th</sup> March 2019. The deceased's estate was thus shared and each beneficiary knows his or her entitlement.
2. The widow died on 12<sup>th</sup> April 2021. The current application is dated 24<sup>th</sup> September 2021 by Mary Mukami Mbugua. She has sought under **sections 74 and 76** of the **Law of Succession Act (Cap. 160)** that she, Elias Murage Mbugua and Hellen Wairimu Mbugua do substitute their late mother as administrators of the estate of the deceased. The administration of the estate had not been completed. The three are some of the children of the deceased. The widow of the deceased left a written Will in which she bequeathed Githunguri/Giathieko/374, Githunguri/Kimathi/609 and shares to her children as received in the certificate of confirmation. The application sought that the distribution in the certificate of confirmation be reviewed to accord with the last wishes of the widow.
3. It is material that Githunguri/Giathieko/374 and Githunguri/Kimathi/ 609 were some of the properties left by the deceased, and were the subject of distribution on 13<sup>th</sup> March 2019. The court ordered that each beneficiary of the estate of the deceased would get an equal share in each parcel. The widow's Will could only have dealt with her share in the respective parcel.
4. The application was opposed by George Gatheru Mbugua and Elizabeth Wangui Mbugua. These are children of the deceased. George Gatheru Mbugua stated that the proposed administrators are, morally unfit to administer the estate of the deceased, and that these are the people who manipulated their late mother when she was alive. Elizabeth Wangui Mbugua doubted that the supporting affidavit had been sworn and commissioned in Kenya on 24<sup>th</sup> September 2021 as the applicant lives in the USA and that the last time she was in Kenya was in May 2021. Secondly, the applicant did not seek the consent of the other beneficiaries as to who should take over the administration of the estate. Thirdly, the proposed administrators permanently live in the USA and would not diligently administer the estate. Fourthly, the proposed administrators have all along demonstrated hatred and bias towards her and she consequently does not trust that they will treat her fairly.
5. That is a straightforward matter. Margaret Njeri Mbugua died before she had completed the administration of the estate of the deceased. Under **section 76(e)** of the **Act**, the grant that was issued to her has become useless and inoperative. It is hereby revoked and the certificate of confirmation issued to her set aside.
6. The estate cannot remain without an administrator, and therefore the court has to make an appointment. All the children of the deceased have each an equal claim to be appointed as the administrators. However, the court has the final say under **section 66** of the **Act** on who will become the administrator of the estate. What is material is that each beneficiary knows what he or she is entitled to in the estate, and therefore the fear that there will be manipulation or unfair treatment is misplaced. There is bad blood amongst the children, but the parties have to work together to realise their respective benefits in the estate of their father. The fact that some of the beneficiaries live in the USA should not held against them. Communication has reduced distance. Elizabeth Wangui Mbugua acknowledges that the applicant visits Kenya.
7. Considering all the facts of the case, I hereby appoint the applicant Mary Mukami Mbugua, Elias Murage Mbugua, George Gatheru Mbugua and Elizabeth Wangui Mbugua to be the joint administrators of the estate of the deceased Samuel Mbugua Gatheru. The certificate of confirmation issued on 13<sup>th</sup> March 2019 is hereby recalled and a fresh one issued showing the four new administrators.
8. This is a family dispute. Each side will bear own costs.

**DATED and DELIVERED at NAIROBI this 7<sup>TH</sup> day of FEBRUARY 2022.**

**A.O. MUCHELULE**

**JUDGE**