



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 900 OF 2019**

**IN THE MATTER OF THE ESTATE OF NICHASIOUS KIRUGU NDWIGA- DECEASED**

**PATRICK KIRUGU KANGETHE.....1<sup>ST</sup> PETITIONER/RESPONDENT**

**MICHAEL NDWIGA KARUGU.....2<sup>ND</sup> PETITIONER/RESPONDENT**

**VERSUS**

**MARY ANN WACHEKE KIRUGU.....OBJECTOR/APPLICANT**

**RULING**

1. This cause relates to the estate of Nicholas Kirugu Ndwiga who died intestate on 13<sup>th</sup> June 2019. On 8<sup>th</sup> October 2019 the petitioners/respondents Patrick Kirugu Kang'ethe and Michael Ndwiga Kirugu petitioned this court for the grant of letters of administration intestate. The other beneficiaries were Agnes Wawira Kirugu, Monica Mukami Kirugu, Mercy Wacuka Kirugu and Valentine Ndwiga Kirugu.
2. The estate was stated to comprise LR No. Dagoretti/Ruthimitu/473, LR No. Kabere/Njiku/865, Plots at Makindu in Makueni County, vehicles KAT xxx A, tractor KTCB xxx P and A/C No. xxxxxxxxxx KCB.
3. The applicant/objector Mary Ann Wacheke Kirugu filed an objection to the making of the grant. Her case was that the deceased was her legal husband following a marriage contracted on 6<sup>th</sup> January 2002 at Waithaka Catholic Church. She produced a marriage certificate. They got a child on 13<sup>th</sup> February 2004. She produced a birth certificate. Her complaint was that the petitioners, who are sons of the deceased's first wife who died, refused to engage her and seek her consent when filing the petition.
4. The petitioners did not respond to the objection, even upon service.
5. There is uncontroverted evidence that the applicant and the deceased were legally married. The deceased having had another wife who died leaving children, it means that the deceased had two houses. Under **section 66** of the **Law of Succession Act (Cap 160)**, the applicant and the petitioners (or any of them) should be able to administer the estate left by the deceased.
6. I direct the Deputy Registrar to have the petition gazetted, if it was not. If it was gazetted, then a joint grant should issue to the petitioners and the objector/applicant.

**DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF NOVEMBER 2021.**

**A.O. MUCHELULE**

**JUDGE**