



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERUGOYA

SUCCESSION CAUSE NO. 46 OF 2015

IN THE MATTER OF THE ESTATE OF MUGO KABIRE KUBU (DCD)

TERESIA NJERI MAGONDU.....1ST APPLICANT

V E R S U S

PILCILA MUCERE KIKURU.....1ST RESPONDENT

WAMBUI MBONI.....2ND RESPONDENT

RULING

1. In this matter which relates to the estate of Mugo Kabire Kubu (deceased) who died intestate on 13/7/2001, a Grant of Letters of Administration was issued to Pilcila Mucere Gakuru and Wambui Mboni in their capacity as the daughters of the deceased on 30/4/2015.

2. The grant was later confirmed on 10/3/2016 and the estate of the deceased comprised in land parcel No. Kiine/Gacharo/1837 was distributed equally to the two administrators.

3. Thereafter a summons for annulment of grant was filed by Teresia Njeri Magondu dated 22/2/2017 who alleged that the petitioners obtained the grant fraudulently by making a false allegation that they were daughters of the deceased Mugo Kabire Kubu. It was alleged that the deceased never married in his life-time and therefore never left a family surviving him. Owing to this allegation of fraud, on 27/6/2017 the court ordered that the grant be annulled.

4. The applicant Teresia Njeri Magondu has filed a summons urging the court to appoint her as the new Administratrix of the estate of the deceased.

5. The petitioners opposed the application and filed an affidavit - support to replying affidavit.

6. I have considered the application. The **Law of Succession Act** gives court jurisdiction to appoint administrators (Administratrix) to administer the estates of deceased persons. **Section 47 of the Act** gives court jurisdiction to entertain any application and determine any dispute as well as to pronounce such decree or orders as may be expedient. The section provides:-

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient: Provided that the High Court may for the purpose of this section be represented by resident magistrates appointed by the Chief Justice.”

7. With regard to appointment of administrators, the Act gives the court the sole discretion to appoint administrators. **Section 66 of the Law of Succession Act** Provides:-

“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 interests 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.”

The court in determining whom to issue the grant shall consider as a basis for the appointment, the best interest of the estate. This is buttressed by **Rule 73 of the Probate and Administration Rules** which provides that nothing in the Rules shall limit or otherwise affect the inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

8. There are conflicting interests in the cause with petitioners claiming to be daughters of the deceased and the applicant denying that the deceased had any children and that she is the closest relative being the niece of the deceased. A daughter would have priority in the estate of her deceased father. However the petitioners had also claimed to be wives of the deceased. The court ordered the annulment of the grant as it was not clear as to what is their relationship with the deceased. On the other hand the petitioners have denied that the applicant is a niece of the deceased. These are matters which can be ironed out upon the parties adducing evidence which can then be tested in cross-examination. The grant having been annulled, the onerous duty of this court to appoint an administrator for the purpose of the cause to proceed. I order that the grant be issued jointly to Pilcila Mucere Gikuru and Teresia Njeri Magondu. They will then move the court for the Confirmation of the Grant and if there is no consent, either of them can file a protest and the court will give directions.

Dated at Kerugoya this 13th Day of February 2020.

L. W. GITARI

JUDGE