



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 781 OF 2015**

**IN THE MATTER OF THE ESTATE OF MACHARIA NJUGUNA (DECEASED)**

MICHAEL MAINA MUIRU.....1<sup>ST</sup> APPLICANT

SUSAN WAMBUI MUIRU.....2<sup>ND</sup> APPLICANT

**VERSES**

STANLEY MUIRU NJUGUNA.....RESPONDENT

**RULING**

1. It would appear that, following the death of the deceased Macharia Njuguna on 26<sup>th</sup> December 1974, there was filed **Succession Cause No. 17 of 1978** at the District Magistrate Nairobi in which his estate comprised in Dagoretti/Riruta/320 and Dagoretti/Riruta/T.143 was shared out to the beneficiaries.

2. This citation taken out by Michael Maina Muiru (the citor) against the citees Eliud Njuguna, Edward Waithaka, Wambui Muiru, Njuguna Muiru, Thairu Muiru, Simon Waithaka Muiru, Wanjiru Gathoni Muiru, Kimuhu Muiru, Wambui Muiru, Mungai Muiru, Wamaitha Muiru and Wanjiku Muiru asking them to accept or refuse letters of administration intestate in respect of the estate of the deceased cannot be sustained. Neither the citees nor the citor can file another petition in respect of the estate of the deceased. The matter is *res judicata* under **section 7** of the **Civil Procedure Act**. The court cannot repeat itself in this matter which was already been decided by a competent court (**John Florence Maritime Services Limited and Another –v- Cabinet Secretary for Transport and Infrastructure and 2 others [2015]eKLR**). The District Magistrate’s Court has already heard the matter and issued the relevant certificate enabling the sharing of the estate of the deceased.

3. I am mindful of the fact that the citor has not sought the revocation of the grant that was issued on this matter. I am also alive to the fact that the deceased died before the **Law of Succession Act (Cap. 160)** came into operation. (**In Re Estate of Nduati Mbuthia (Deceased) [2015] eKLR**). The remedy to revocation under **section 76** of the **Act** would not be available to the citor. The lower court was called upon to determine the heirs of the deceased under the Kikuyu customary law, and it determined.

4. The preliminary objection taken out by the citees on 11<sup>th</sup> March 2019 is sustained. The citation is dismissed with costs, and the objection sustained with costs.

**DATED and SIGNED at NAIROBI this 27<sup>TH</sup> day of FEBRUARY, 2020.**

**A.O. MUCHELULE**

**JUDGE**

**DATED and DELIVERED at NAIROBI this 2<sup>ND</sup> MARCH, 2020.**

**A.N. ONGERI**

**JUDGE**