



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 987 OF 2018
IN THE MATTER OF THE ESTATE OF MARY MUTHONI KANGETHE - (DECEASED)

DUANE NJANE NJENGI.....OBJECTOR

VERSUS

JANE WANJIKU KANGETHE.....1ST PETITIONER

MARGARET NJOKI KANGETHE.....2ND PETITIONER

RULING

1. The deceased Mary Muthoni Kangethe died intestate on 30th September 2017. She left LR No. Dagoretti/Kangemi/717 and LR No. Dagoretti/Riruta/6083. On 27th July 2018 her sisters Jane Wanjiku Kangethe and Margaret Njoki Kangethe petitioned this court for the grant of letters of administration intestate. The deceased had a son who died, leaving the objector Duane Njane Njengi as his only child. In the petition, the petitioners acknowledged that the objector was the grandson of the deceased who was the only beneficiary of her estate.

2. The objector filed this objection to the grant, saying that the petitioners had concealed his existence with the intention of disinheriting him. The petitioners denied that they sought to disinherit the objector. They stated that the petition had indicated that he was the only beneficiary of the estate of the deceased. The reason why they had not involved him in the petition, and this formed one of the objector's complaints, was because he was underage (a minor) at the time. He has since become of age. The objector was born on 6th May 2000, and was therefore not yet an adult when the petition was filed. The petition indicated that he was underage. He attained age 18 on 6th May 2018. He filed the objection on 29th March 2019.

3. Under **section 56(1)** of the **Law of Succession Act (Cap. 160)** –

“(1) No grant of representation shall be made—

(a) to any person who is a minor, or of unsound mind, or bankrupt.”

4. There is no dispute that under **section 66** of the **Act**, the objector was the closest person to the deceased, and the one entitled to petition for the grant. However, he lacked capacity to petition on account of being a minor. Having that incapacity, the court had the final discretion under the **section** to determine who would be given the grant to administer the estate of the deceased. Now that he is of age, he ranks higher in preference, and the court has to consider this ranking when exercising its discretion. Under **rule 7(7)** of the **Probate and Administration Rules** –

“(7) Where a person who is not a person in the order of preference set out in section 66 of the Act seeks a grant of administration intestate he shall before the making of the grant furnish to the court such information as the court may require to enable it to exercise its discretion under that section and shall also satisfy the court that every person having a prior preference to a grant by virtue of that section has—

(a) renounced his right generally to apply for a grant; or

(b) consented in writing to the making of the grant to the applicant; or

(c) been issued with a citation calling upon him either to renounce such right or to apply for a grant.”

I find that the disclosure in the petition that the deceased had left the objector as the only beneficiary, but that he was under age, fulfilled the requirements of the **rule**.

5. Under **rule 26** of the **Probate and Administration Rules**, the petitioners were under obligation to let the objector, despite his age, know that they were going to petition for the grant. I consider, however, that the objector could not, in that incapacity, be able to oppose the petition, give his consent or renounce his claim to the petition.

6. On the facts available, I absolve the petitioners of blame in petitioning for the grant. They did not state that they stood to benefit from the estate. They declared that the objector was the only beneficiary.

7. In conclusion, and given the facts of this case, I allow the objection by declaring that the objector and the 1st petitioner Jane Wanjiku Kangethe shall be the ones to whom the grant shall be given, after the petition has been gazetted (if it has not been).

8. Costs shall be in the cause.

DATED and DELIVERED electronically, following consent of the parties, at NAIROBI this 8TH day of APRIL 2020.

A.O. MUCHELULE

JUDGE