



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1539 OF 2016**

**IN THE MATTER OF THE ESTATE OF DAVID MBIJIWE M'IKIARA(DECEASED)**

**FRIDAH NKATHA MBIJIWE.....APPLICANT**

**VERSUS**

**ELIZABETH KAROKI MBIJIWE.....1<sup>ST</sup> RESPONDENT**

**CHARITY NTIMI MBIJIWE.....2<sup>ND</sup> RESPONDENT**

**MARTIN KINYUA MBIJIWE.....3<sup>RD</sup> RESPONDENT**

**KENNETH KOOME MBIJIWE.....4<sup>TH</sup> RESPONDENT**

**RULING**

1. The deceased David Mbiyiwe M'ikiara died intestate on 18<sup>th</sup> April 2016. He was survived by two widows: Elizabeth Karoki Mbiyiwe (1<sup>st</sup> respondent) and Charity Ntimi Mbiyiwe (2<sup>nd</sup> respondent). He had 9 children who included the applicant Fridah Nkatha Mbiyiwe, Martin Kinyua Mbiyiwe (3<sup>rd</sup> respondent) and Kenneth Koome Mbiyiwe (4<sup>th</sup> respondent).

2. On 21<sup>st</sup> September 2016 the applicant petitioned for the grant of letters of administration intestate. On 17<sup>th</sup> May 2017 she filed a citation to the respondents under **rule 21(2)** of the **Probate and Administration Rules**. On 27<sup>th</sup> January 2020 the 3<sup>rd</sup> respondent filed an affidavit of protest to say that the family had met on 14<sup>th</sup> May 2016 and agreed on them to represent the family and to petition for the grant, and to subsequently manage the estate of the deceased. They made reference to the fact that most of the deceased's estate was tied to his late father's estate that was the subject to numerous outstanding legal disputes in Nyeri and Meru High Courts.

3. Ultimately, the question shall be who shall be granted letters of administration intestate in respect of the estate of the deceased. Subsequently, the question shall be how the estate of the deceased shall be shared among the beneficiaries. The beneficiaries have already been identified. The extent of the estate shall be ascertained at the time of the confirmation of the grant.

4. It is also trite that, now that the applicant has petitioned for the grant there cannot be another petition for the same estate. Secondly, the fact that one has petitioned for a grant does not necessarily mean that he is the one who will be issued with the grant. The law under **section 68 and 69** of the **Law of Succession Act (Cap 160)** and **rule 17** of the **Probate and Administration Rules** is that once the petition has been gazetted, any party is entitled, within the given time in the publication, or such other time that the court may allow, to object to the applicant being issued with the grant, and to file an answer and cross-application for the grant. The petition and cross-application shall then be heard to determine to whom the grant be issued.

5. That being the case, and so that this petition can move forward, and because of the jurisdiction conferred to this court under **section 47** of the **Act** and **rule 73** of the **Rules**, I authorize the petition filed by the applicant to be gazetted. After it is gazetted, the respondents and any other person, shall file objection, answer and cross-application to the grant, which the court shall then be called upon to determine the person to whom the grant shall be issued.

6. I ask that costs be in the cause.

**DATED and DELIVERED electronically at NAIROBI this 2<sup>ND</sup> day of NOVEMBER 2020.**

**A.O. MUCHELULE**

**JUDGE**