



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 289 OF 2006**

**FORMERLY RUNYENJES SUCCESSION CAUSE NO. 87 OF 2009**

**IN THE MATTER OF THE ESTATE OF NJOKA KURIGIA (DECEASED)**

**MARGARET WAMBUI NJOKA.....PETITIONER/RESPONDENT**

**VERSUS**

**EVANS NJUE MUNDIGI (applying as personal representative**

**In the Estate of MUNDINGI KURIGIA).....APPLICANT**

**R U L I N G**

**A. Introduction**

1. This is a ruling on an application dated 25/05/2018 seeking for the following prayers: -

- a) That the applicant be allowed to proceed in this cause as the administrator in place of the respondent/administrator.*
- b) That letters of administration intestate herein be issued to the applicant.*
- c) Alternatively, that the petitioner/respondent be ordered to apply for confirmation of grant and administer the estate failure to which the Deputy Registrar be authorised to execute all the necessary documents in executing the grant.*

2. The grounds in support of the application are that the respondent was issued with the letters of administration intestate on 14/02/2008 jointly with one Mundigi Kurigia who was the applicant's father but who passed on 10/11/2013 before the grant was confirmed.

3. The grant relates to the deceased's estate one Njoka Kurigia who was the elder brother of the applicant's late father and the husband to the respondent. That the respondent had omitted to include one parcel of land belonging to the deceased LR. No. Mbeere/Mbita/ 3891 where the applicant's father is a co-proprietor with the deceased.

4. That despite demand by the family of the deceased administrator to apply for confirmation of the grant, the respondent has refused/neglected to act. The applicant is convinced that if he is joined as a co-administrator to the estate, he will do everything possible to ensure that the process of the cause is completed.

5. The respondent opposed the application in her replying affidavit sworn on 13/07/2018. It is deposed that the application is incompetent and bad in law. Secondly, it was stated that the applicant's late father has no legal interest in the estate of his brother, the deceased.

6. It is further stated that before his death, the applicant's father had abandoned his claim in the estate of the deceased. It is further deposed that the respondent is willing to apply for confirmation of the grant but in the absence of the applicant who the respondent refers to as a stranger in her husband's estate. The respondent denies that LR. Mbeere/Mbita/3891 was family land capable of being shared by the family including that of the applicant's father.

7. I have considered the grounds in support of the application and those in opposition. I have also perused the court record in this cause and made a few observations: -

- 1) That the applicant's father Mundigi Kurigia had applied for letters of administration in this cause as a cross-petitioner.*

**2) That the petition of the respondent and the cross-petition were followed by consent orders between the parties recorded by the court on 14/02/2018.**

**3) That by consent the respondent herein in her capacity as the widow and the applicant's father in his capacity as the brother of the deceased were appointed joint administrators herein.**

**4) That since the issuance of the letters of administration intestate on 14/02/2008, the cause was abandoned for ten (10) years and the matter only resurfaced when this application was filed on 4/06/2018.**

8. From the above facts borne by the record, the argument of the respondent that the applicant is a stranger in this cause is not correct. The co-administrator was the applicant's father who had joined the cause by way of cross-petition claiming a share in one of the assets of the deceased on grounds that it was family land. The respondent agreed to a consent between him and the cross-petitioner. This demonstrates that she recognised the interest of the applicant's father in the estate of her deceased husband and that she had no problem with the cross-petition.

9. Upon the death of the applicant's father, the respondent had a legal obligation to move the court to have his personal representative substituted as a co-administrator so that the cause may be processed to conclusion. The administrator failed in his legal duty and the applicant has now come on board to protect the interests of his family in the deceased's estate. He has already followed the law in that he has been appointed the personal representative of his late father's estate. This appointment gives him the legal standing to join in this cause.

10. In his cross-petition, the applicant's father referred to LR. Mbeere/Mbita/1030 as family land. He said that he represented his family in HC Misc. Application No. 11 of 2004 and won the case. He further stated that the land ought to be distributed to the family of both the deceased and of the applicant's father both of whom are brothers. The respondent did not mention these facts which are in the court record and which must have influenced her to record a consent with the applicant's father. The consent order made on 14/02/2008 is still valid for it has not been set aside.

11. The applicant has stated that one parcel No. Mbeere/Mbita/3891 in which his family has interest has not been included in the case for distribution. The respondent has not answered as to why she left out the parcel from the estate but she did annex a certified copy of register to show that her late husband was the sole registered owner. This status of ownership subsisted even at the time the parties recorded consent on the cross-petition.

12. The certified copy of register shows that LR. 3891 resulted from subdivision of LR. Mbeere/Mbita/1013. The respondent did not include LR. Mbeere/Mbita/1013 for distribution in the estate. The issue that arises is whether the respondent hopes to file a separate cause to deal with its distribution which is against the law. Or does she intend to bring it on board at a later stage at her convenience and with an unknown motive.

13. I find that the applicant is an interested party in this cause and that he qualifies to be substituted in place of his deceased father who was a co-administrator in this cause. He possesses a limited grant that has not been challenged. The respondent has not shown good cause why the deceased administrator should not be substituted.

14. The applicant unlike the respondent was not represented by an advocate and his prayers in the application are evident of this fact.

15. For the foregoing reasons, I allow the application in the following terms: -

***i. That the applicant is hereby substituted in place of the deceased co-administrator Mundigi Kurigia as a co-administrator with the respondent.***

***ii. That fresh letters of administration intestate to issue in the joint names of the respondent and the applicant.***

***iii. That all the assets in the name of the deceased be included in this cause and in the application for confirmation of grant.***

***iv. That any of the administrators or both jointly to file an application for confirmation of grant within thirty (30) days.***

***v. That each party do meet their own costs of this application.***

16. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 16TH DAY OF JANUARY, 2019.**

**F. MUCHEMI**

**JUDGE**

**in the presence of: -**

**Ms. Maroko for Kahuthu for petitioner/respondent**