



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

CIVIL CASE NO. 973 OF 2017

IN THE MATTER OF THE ESTATE OF DAVID CHEGE JASAN (DECEASED)

PHYLLIS WANGECI KIMARU.....1<sup>ST</sup> APPLICANT

WILSON GITONGA KIMARU.....2<sup>ND</sup> APPLICANT

VERSUS

MARY WAMBUI NJOROGE..... RESPONDENT

RULING

1. The deceased died intestate on 26<sup>th</sup> May 2017. He was operating a business of making and selling concrete products. At the time of his death he was staying with the respondent Mary Wambui Njoroge on LR Kiambaa/Thindigua/3709. He left three children (the 1<sup>st</sup> applicant Phyllis Wangeci Kimaru and two minors). The children live with the deceased's mother Phyllis Wangeci Kimaru. The deceased left a brother Wilson Gitonga Kimaru (2<sup>nd</sup> applicant).

2. The applicants have applied for a limited grant *ad colligenda bona* under **section 67(1)** of the **Law of Succession Act (Cap 160)** and **rule 36** of the **Probate and Administration Rules**. They seek to be allowed to collect and preserve the estate of the deceased. The minor children of the deceased are in school. The grant is required to enable the payment of the fees. The deceased's children were being provided for by him before he died. They state that they lack that provision. The case of the applicants is that the deceased's estate is being wasted and intermeddled with by the respondent who is not even paying the employees of the business firm.

3. The respondent opposed the application. Her case was that she is the widow of the deceased; that the deceased married her customarily in 2001. She acknowledges the deceased's children. She stated that she and the deceased were operating the business above. Upon his death she has continued to manage the business, and pays the employees. She further stated that she pays fees for the deceased's children. She filed a petition for the grant of letters of administration intestate in **High Court Succession Case No. 139 of 2017** at Kiambu. She caused a citation to issue to the children of the deceased. That was when the present application was filed.

4. It is not lawful that in respect of one deceased the beneficiaries are litigating over his estate in two different courts. This is why I consider the present application an abuse of the process of the court, and hereby dismiss it with costs. This is done to allow for the matter before the High Court at Kiambu to proceed. It will determine who among the parties is entitled to a grant.

5. The applicant herein (and all other beneficiaries) should respond to the citation before the Kiambu Court, where a decision will be made as to who has the capacity to petition for the full grant. The court at Kiambu will, among other things, determine whether or not the respondent was a widow of the deceased. It will determine who among the parties is entitled to a grant.

6. The reason I cannot allow this application is because an application for a limited grant *ad colligenda bona* is not meant to be sought where the court will be asked to determine weighty and contentious issues regarding the estate of a deceased (**HC Succession Cause Case Ad Colligenda bona Cause No. 11'A' of 2011 In the Matter of the Estate of Grace Wairimu Kamau (Deceased)**).

DATED and SIGNED at NAIROBI this 5<sup>TH</sup> day of FEBRUARY 2019.

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI this 12<sup>TH</sup> day of FEBRUARY 2019.

ALI-ARONI

JUDGE