



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI (FAMILY DIVISION)**

**SUCCESSION CAUSE NO 1002 OF 2016**

**IN THE MATTER OF THE ESTATE TIMOTHY GITHUA KARIUKI (DECEASED)**

**NAIROBI WOMEN HOSPITAL.....APPLICANT**

**VERSUS**

**DANIEL KARIUKI.....1<sup>ST</sup> RESPONENT**

**RAYMOND N. GITHUA.....2<sup>ND</sup> RESPONENT**

**HUDSON GITHUA.....3<sup>RD</sup> RESPONENT**

**CAROLINE NJERI KARIUKI.....4<sup>TH</sup> RESPONENT**

**EUNICE WAIRIMU.....5<sup>TH</sup> RESPONENT**

**TIMOTHY G. NYOKABI.....6<sup>TH</sup> RESPONENT**

**AND**

**JAMES MWANGI KABUGI.....1<sup>ST</sup> INTERESTED PARTY**

**OLIVE JOYCARE LIMITED.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

1. This ruling is made as a follow up to the ruling that I delivered on 21<sup>st</sup> of February 2019 following two pending applications. There is need to appoint administrators who will thereafter collect and preserve the estate and settle the liabilities and obligations of the estate, which estate is currently fraught with fights, disagreements and fraudulent actions of one of the beneficiaries who has depleted the estate to the detriment of all other beneficiaries, in particular his mother who has since the 12<sup>th</sup> of March 2017 been detained due to a huge hospital bill standing at over 9 million Shillings today.

2. On the 15<sup>th</sup> of June 2016 the widow herein **CWTG** Petitioned for Grant of letters of administration. However, her application was not processed as it did not have consents of all beneficiaries except the 2<sup>nd</sup> respondent. Two months later the widow was hospitalised at the Nairobi women’s hospital due to reduced level of consciousness, headaches, & slurred speech. She is said to be hypertensive but not compliant to medication. Upon further examination the hospital found that she had haemorrhagic stroke with intraventricular spillage. Upon mental examination she was found to have senile dementia.

3. Though not an issue it is questionable, whether the widow had capacity to file the current application or borrow any loans as insinuated by the 2<sup>nd</sup> respondent or even to appoint estate agents as suggested by the 2<sup>nd</sup> respondent or the 1<sup>st</sup> interested party. From the evidence before court she may have been in the hands of the 2<sup>nd</sup> respondent.

4. Pending determination is the appointment of administrator(s) and settlement of debts. As the Court determines the above issues it will also have to determine the issue of the widow’s dependency that needs consideration. The matter of the widow’s dependency has in all fairness to be determined here and now and in the circumstances of the case, further the court will have to appoint a guardian for the widow.

The two issues that concern the widow will have to be determined as she has been neglected by those who should be providing with care and

attention bearing in mind that she enjoys life interest in her later husband's vast estate.

5. In a bid to arrive at a decision the court in its earlier ruling of 21<sup>st</sup> February 2019 directed the beneficiaries do file their statements/profiles and be available for examination by court pursuant to Sections 66 & 70 of the Law of Succession Act.

6. All the respondents herein save for the 4<sup>th</sup> and who are all children of deceased complied with the court directive and subjected themselves to cross-examination.

At cross examination of Daniel Kariuki & Eunice Wairimu it was clear that Hudson Githua one of the sons of the deceased enjoys the confidence of his siblings. Indeed, Daniel & Hudson were equally confident of Eunice as a likely administrator. The two had no issue with Daniel either.

7. Currently Hudson is an employee of the County Government of Kiambu, an acting deputy director of Enforcement and Administration. He is an Alumni of Starehe boys Centre and Strathmore University where he obtained a diploma in Information Data Processing and Management. All his other siblings went up to form 4 and as they described themselves, are hustlers. I observed Hudson who was very candid about the estate and like the rest blamed the 2<sup>nd</sup> respondent for squandering all the funds and failing to utilise the same for payment of the hospital bill and being overly aggressive and violent to the others and not being accountable.

8. A few minutes with a candidate may not be adequate, however within the short span I observed Hudson Githua as one who carries the image of a well-groomed administrator, is civil and forthright. He also has leadership qualities that must have endeared his older siblings to pick on him as a likely administrator.

The estate has not only been depleted, it has been mismanaged and it is time now that Hudson must lead his siblings to put the estate back in order, collect and preserve the same pending distribution. However, he needs assistance from his siblings bearing the history of this matter in mind and the surrounding circumstances,

9. Consequently, I hereby appoint **Hudson Githua, Daniel Kariuki and Eunice Wairimu** as administrators of the Estate of Timothy Githua Kariuki.

10. I further direct and order the said administrator to do the following and report to court within the next seven (7) days of the date hereof; -

- a. Obtain details of all assets and bank accounts left behind by the deceased.
- b. Obtain details of all tenants, and rent payable, arrears of all the rental units belonging to the estate.
- c. Engage with the interested Parties; namely James Mwangi Kabugi & Olive Joy Care Limited forthwith on the accounts of the estate, interrogate the same and make a report.
- d. Propose on how the outstanding liability to the hospital will be settled.
- e. Propose on how the widow's house will be refurbished, furnished to an accepted and modern standard.
- f. Propose on how the widow's physical and medical needs are going to be met, and give details of likely costs guided by the medical report on record.
- g. Identify and engage at least 3 reputable management firms immediately with the intention of one of them taking over the management of the income generating assets of the estate.
- h. Identify where the titles of the assets are and reclaiming the same.

11. With the above, I direct and Order **James Mwangi Kabugi & Olive Joy Care Limited** to immediately cease management of the assets of this estate, to account to the Administrators so appointed from the period of August 2016 to date and to release any funds, relevant documents, including titles in their possession forthwith and not later than seven days hereof.

12. I further direct and order **Raymond Githua** to immediately cease intermeddling with the estate, not to deal with the agents or tenants, not to carry out any repairs and/or generally engage in the management of the estate in any manner whatsoever.

I warn the said Raymond Githua that interfering with an estate is an offence that is punishable in law.

13. In the interest of justice devoid of any technicalities I must rescue the widow who has been abandoned in a hospital since her discharge on the 12<sup>th</sup> of March 2017.

In this regard as the first responsibility to take care of a person who is incapacitated goes to the children in the absence of a spouse, I appoint Eunice Wairimu the first born daughter of the widow, to be her guardian, to live with the widow at the widow's residence, which residence shall be refurbished and furnished by the estate to a high standard befitting her, as she has a life interest in this vast estate, manage her medical and health care needs with the assistance of a nurse if need be. The will further estate meets all the costs necessary for the medical need and comfort of the widow and Eunice who may have to curtail her livelihood.

14. Costs of both applications will be met by each party for now.

**DATED and Delivered in Nairobi this 11<sup>th</sup> day of March, 2019**

.....

**ALI-ARONI**

**JUDGE**

**In the presence of; -**

Counsel for the Applicant Hospital.....

Counsel for 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> 5<sup>th</sup> & 6<sup>th</sup> Respondents.....

Counsel for the 4<sup>th</sup> Respondent.....

Interested Parties.....