



**REPUBLIC OF KENYA**

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

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1409 OF 2018**

**IN THE MATTER OF THE ESTATE OF RODA MBULWA MUTEI (DECEASED)**

**RULING**

1. The Deceased herein RODA MBULWA MUTEI died intestate on 6.1.2018 at Eastleigh in Nairobi leaving two beneficiaries surviving her namely:

**(i) PAUL MUIA MUTISO and,**

**(ii) DAVID NDOLO MUTEI**

2. The two beneficiaries who are sons of the deceased petitioned for Letters of Administration which were not granted on the basis that the age difference between deceased and the 1<sup>st</sup> administrator was only 9 years.

3. The first Administrator has filed an affidavit stating that his mother gave birth to him at a very young age hence the age difference of 9 years.

4. The Chief's Letter has confirmed that the deceased left the two sons who are the sole beneficiaries of the Estate.

5. It could be that the dates of birth are not accurate as it is not plausible that the deceased would have given birth to the 1<sup>st</sup> Administrator at the age of 9 years.

6. I have no reason to doubt the relationship between the 1<sup>st</sup> Administrator and the deceased.

7. In determining who should be appointed administrators to replace the dead ones, I should be guided by **section 66** of the **Law of Succession Act**, which provides as follows –

*‘When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference –*

**a. Surviving spouse or spouses, with or without association of other beneficiaries;**

**b. Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided in Part V;**

**c. The Public Trustee; and**

**d. Creditors.’**

8. I direct that letters of Administration to issue to the two Administrators.

Orders to issue accordingly.

**DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 12<sup>TH</sup> DAY OF JULY, 2019**

**ASENATH ONGERI**

**JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.**