



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 17 OF 2018**

**IN THE MATTER OF THE ESTATE OF M' MABEA M'ITAMGURU**

**KENNETH MBURUGU GITUMA.....PETITIONER/RESPONDENT**

**VERSUS**

**JOHN KIREMU NKONGE.....OBJECTOR/APPLICANT**

**RULING**

1. **M'Nabea M'Itanguru** ("the deceased") died on 6/8/2003. Pursuant thereto, the petitioner applied for letters of administration on 7/9/2018.
2. In **Form No. P&A 5**, he listed the beneficiaries as **Geoffrey Ntoburi, Rosemary Muthoni Gituma, Isabella Nkatha Nkonge, Purity Kagwiria Justus, Kenneth Mburugu Gituma**. He set out the estate as constituting **Land Parcel Nos. Ntima/Igoki/6101, 6102, 6103 and Land Parcel No. Nyaki/ Munitu/1185**.
3. The petition was gazetted on 16<sup>th</sup> November 2018. On 17/6/2019, **John Kiremu Nkonge (the objector)**, filed an objection seeking to revoke the grant of letters of administration allegedly granted to **Kenneth Mburugu Gituma** on 24<sup>th</sup> September 2018.
4. The objector contended that he is a grandson of the deceased by virtue of being a son of the late **Sylvester Ndonga Nabeas and late Margaret Nkirote Nthange**; that he has always been in occupation of **LR. No. Ntima/ Igoki /6103** since 1991; that his consent and that of **Veronica Mwiru M' Nabea** was not sought in bringing this petition.
5. The application was opposed by the petitioner vide his replying affidavit sworn on 19/9/2019 (sic). He averred that the application was misconceived since the estate relate to the objector's grandfather and his step mother is listed as a beneficiary thereon and thus he is represented. That the letter of the Deputy Commissioner related to the objectors father as opposed to the deceased in this Cause. He concluded that his failure to include **Veronica Mwiru M'Nabea** as a beneficiary was because she had been given a portion of land by her father.
6. From the affidavits and the written submissions on record, the issue for determination is; **who are the beneficiaries of the deceased?**
7. Peremptorily, no grant has been issued at this stage. By the time the file was endorsed for the issuance of the grant on 9/5/2019, the present application was filed shortly thereafter.
8. One thing is clear, both the petitioner and the objector are grandsons of the deceased. It would seem that they were so blinded with their respective selfish interests that none of them was minded to set out the family tree of the deceased. Further, many of the children of the deceased seem to have already passed on or are not interested in taking out the grant of letters in this case.
9. There is no dispute that both the objector and one **Veronica M'Nabea** are alleged to have been given property by the deceased during his lifetime. That does not mean they be excluded from the list of beneficiaries of his estate. The issue of their exclusion will only arise at the time of confirmation when the estate will be up for distribution by the application of **section 42 of the Law of Succession**.
10. In this regard, it was wrong for the petition to exclude the two from the list of beneficiaries set out in **Form No. P&A 5**.
11. **Section 66 of the Law of Succession Act**, provides:-

**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 by Part V;*

*(c) the Public Trustee; and*

*(d) creditors:*

...

12. In the present case, the other beneficiaries had consented to the petitioner lodging the present Cause. However, considering that he deliberately left out his step-cousin, the objector, this Court is minded to appointing both of them as administrators.

13. Accordingly, the orders that commend themselves to the Court are that the application dated 17/6/2019 is allowed on the following orders:-

a) grant hereby issues to **Kenneth Mburugu Gituma** and **John Kiremu Nkonge** as joint administrators of the estate of the late **M’Nabea M’Itanguru**.

b) the joint administrators and all the beneficiaries of the deceased do present themselves before the Deputy County Commissioner, Imenti North within 30 days of the date hereof and assist the said administrator write a comprehensive letter of who the actual children and grandchildren of the deceased were.

c) this matter be mentioned after 30 days to confirm compliance.

**DATED AND DELIVERED AT MERU THIS 7TH NOVEMBER, 2019.**

**A. MABEYA**

**JUDGE**