

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 144 OF 2001

IN THE MATTER OF THE ESTATE OF GITHUNGURI THARA (DECEASED)

RULING

1. On 22nd March 2010, Dulu J made an order herein revoking the grant of representation in respect of the estate of the deceased. The deceased was a polygamist, having married four wives under customary law. It was required that the four houses agree on representation. I am told that three of the houses have agreed on the persons to represent their respective houses, one house has however been unable to settle on a nominee.

2. The houses that have nominated representatives are the second, third and fourth houses; and the proposed nominees are Geoffrey Ngugi Githunguri, Sarah Njoki Maina and Grace Njoki Kamenyi, respectively. The contest in the first house is between Bernard Githunguri Kamau and Peter Munga Githunguri, grandson and son, respectively, of the deceased. Members of the said house, save for Peter Munga Githunguri, favour the grandson as against the son. The grandson had been proposed by a son of the deceased who had himself been proposed as administrator but declined on grounds of age.

3. Efforts to reconcile members of the first house on the matter have failed, despite meetings convened by the area Chief in 2013. I had directed the parties to file submissions on the matter. One side argues that the son should have priority over the grandson, while the other argues that the grandson is the person that the majority in that house has nominated as their representative.

4. Appointment of administrators is at the sole discretion of the court, of course upon taking into account all the circumstances of the case. In this case, the son ought to have priority over the grandson of the deceased, and should be the automatic nominee under ordinary circumstances. However, I do note that members of the first house have exercised their democratic right to determine who ought to represent them as administrator, and the lot has fallen on the grandson. Beyond that none of the parties have sought to persuade me as to the lack of suitability of the two prospective nominees. Let the majority have their way, even as the minority has had the opportunity to have its say on the matter.

5. The final orders that I shall make in the matter are as follows:

(a) That I do hereby appoint Bernard Githunguri Kamau, Geoffrey Ngugi Githunguri, Sarah Njoki Maina and Grace Njoki Kamenyi as administrators of the estate of the deceased herein;

(b) That a grant of letters of administration intestate shall issue to them accordingly; and

(c) That, as the estate comprises of property situated exclusively within Kihara, Kiambaa of Kiambu County, this cause shall be transferred to the High Court of Kenya at Kiambu for final disposal.

6. It is so ordered.

DELIVERED, SIGNED AND DATED AT NAIROBI THIS 2ND DAY OF FEBRUARY, 2018.

W MUSYOKA

JUDGE