



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO.56 OF 2017**

**IN THE MATTER OF THE ESTATE OF ELIJAH NJENGA NG'ANG'A – DECEASED**

**AND**

**DAVID KARIUKI NJENGA.....OBJECTOR/APPLICANT**

**- V E R S U S -**

**GRACE NJERI NJENGA.....PETITIONER/RESPONDENT**

**PHILOMENA WAIThERA NJENGA.....APPLICANT**

**R U L I N G**

**Elijah Njenga Ng'ang'a** died intestate on 9/7/2012 as evidenced by the death certificate filed in this cause.

Grace Njeri Njenga filed this cause seeking to be appointed the administrator of the deceased's estate as wife to the deceased.

Before grant of representation was issued, David Kariuki Njenga, the objector, filed an answer to the petition and a cross petition for grant of letters of administration on grounds that he is the son of the deceased.

Before that petition and cross petition was considered, Philomena Waithera Njenga filed the summons dated 28/3/2018 seeking to substitute Grace Njeri Njenga as the petitioner for letters of administration for the deceased's estate because Grace Njeri Njenga had passed away on 27/6/2017. Philomena exhibited the death certificate in the names of Grace Njeri Njenga.

David Kariuki, the objector, has filed a replying affidavit dated 10/5/2018 opposing the appointment of Philomena as an administrator in place of Grace Njeri. David alleges that Philomena is not the biological daughter of the deceased and therefore he ranks ahead in order of priority to be appointed as the administrator.

When Grace Njeri filed this cause seeking to be appointed as administrator, she exhibited a Chief's Letter dated 13/2/2014. The letter named the following as beneficiaries:

1. **Grace Njeri Njenga – Widow**
2. **Joseph Njoroge Njenga – Son**
3. **Philomena Waithera Njenga – Daughter**
4. **Tabitha Njeri Njenga – Daughter**
5. **Elizabeth Njoki Njenga – Daughter**
6. **Jane Wangari Njenga – Daughter**
7. **Grace Wangui Maina – Daughter**

The letter was issued by chief of Makumbi Location. According to the objector, his father had two wives namely, Eunice Nyokabi Kabiru his mother, who was the first wife and Grace Njeri, the 2<sup>nd</sup> wife; that Eunice Nyokabi had the following children:

1. **Tabitha Njeri Njoroge – Daughter**
2. **Francis Nganga Njenga – Son (deceased)**
3. **David Kariuki Njenga – Son (objector/applicant)**
4. **Keziah Njoki Kariuki – Daughter**
5. **Beth Wanjiru – Daughter**
6. **Monicah Ngoiri Ndungu – Daughter**

That the second house is that of Grace Njeri and the children whom, I have listed earlier. The objector also annexed a copy of a letter from Makumbi Chief's Office dated 18/2/2013. (DKM1.)

I have looked at both the letters dated 18/2/2013 issued, to the objector and that dated 13/2/2014 respectively. Both letters seem to have been written by the same hand. They emanate from the same Chief's Office Makumbi Location. According to the objector, after the funeral of the deceased, the family agreed that both houses were to jointly file the petition but that Grace Njeri secretly went ahead and filed the cause alone without the knowledge of the 1<sup>st</sup> house.

Although the objector filed a cross petition claiming to be the deceased's son belonging to the 1<sup>st</sup> house, the applicant Philomena, has not filed any reply contesting those allegations. The objector did not appear at the hearing of this application but this court cannot overlook the documents filed by the objector.

I have considered the two letters exhibited to the cross petition. The letter dated 18/2/2013 recognizes the fact that the deceased had two wives, Grace Njeri and Eunice Nyokabi. I am persuaded to believe that the objector may be the deceased's son. I have also noted that the applicant, Philomena has not controverted the objector's averments that the objector is a son of the deceased or that the deceased had two wives.

The objector has deponed that Philomena is not the biological child of the deceased. However, that issue cannot be determined at this stage. Since both objector and applicant claim to be the children of the deceased, then they have equal ranking in terms of priority to be appointed as administrators. For that reason, I direct that both Philomena Waithera Njenga and Daniel Kariuki Njenga be and are hereby appointed as administrators of the deceased's estate to represent the two houses and they should proceed to apply for joint letters of representation.

The other issues of who the deceased's dependants are or their entitlements will be determined at a later stage.

It is so ordered.

**Dated and Signed at NYAHURURU this 20<sup>th</sup> day of July, 2018.**

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**R.P.V. Wendoh**

**JUDGE**

**PRESENT:**

Mr. Njuguna Holding brief for Tarus – Advocate for the Applicant/objector

Mr. Soi - Court Assistant

Mr. Mbugua holding brief for Ms. Njeri for – Petitioner/Applicants