



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

IN THE MATTER OF THE ESTATE OF MARTIN FRANCIS THUKU WAITHAKA (DECEASED)

SUCCESSION CAUSE 1325 OF 2018

RULING

The Applicant, Margaret Nyambura Waithaka sought by application filed on 28<sup>th</sup> September 2018 that pending the grant of letters of administration intestate, the court issues limited grant *ad litem* to enable Martin Francis Thuku Waithaka (deceased) be substituted by his widow, Margaret Nyambura Waithaka in **Environment and Land Case No. 616 of 2008 Martin Thuku Waithaka vs Roselyne Dola Ouko & 2 Others**.

The Applicant also seeks that she is granted limited grant *colligenda bona* to take over and operate the Deceased's business; the Karen Physiotherapy Services (Clinic). The deceased, Martin Francis Thuku Waithaka died on 26<sup>th</sup> April 2018, prior to that he ran the said Clinic himself. The Clinic is left unmanaged and as part of the deceased's estate it will go to waste. The Clinic provides Physiotherapy services to patients accessing Healthcare services as an ongoing business that the deceased ran it on a day to day basis. There are employees/qualified staff employed to undertake the specialized operations of the Clinic. The workforce requires to be paid for the services offered on behalf of the Clinic hence the requirement. It is the Applicant's intent to preserve the asset of the deceased's estate as a viable ongoing business by providing continuous management of the Clinic pending the full grant of letters of administration intestate. The widow/applicant undertakes to provide/render full and proper account of the Clinic's revenue and expenditure to the court and beneficiaries.

The Applicant/widow of the deceased attached the following documents to the application:-

- a) Death Certificate of the deceased;
- b) Copy of Originating Summons of **ELC 616 of 2008**;
- c) Certificate of Registration of Karen Physiotherapy Services in the name of Martin Francis Thuku Waithaka (deceased).
- d) List of Assets that comprise of the deceased's estate;
- e) Affidavit filed on 8<sup>th</sup> October 2018 with written consents of the children of the deceased authorizing mother/widow to obtain limited grant *ad litem* to pursue the deceased's suit and limited grant *colligenda bona* to run the Karen Physiotherapy Services. They are;
  - i) Agnes Gathoni Nganga
  - ii) Esther Wanjiru Waithaka
  - iii) Marcelino Thuku Waithaka
  - iv) Jane Wanjiku Waithaka
  - v) Marygoretti Wambui Waithaka
  - vi) Veronica Njeri Waithaka
- f) The Chief's letter dated 23<sup>rd</sup> August, 2018.

This court is satisfied that pending obtaining full grant the circumstances outlined by the Applicant/widow of the deceased warrant the limited grant *ad litem* to prosecute/defend the **ELC 616 of 2008** on behalf of the estate of **Martin Francis Thuku Waithaka** (Deceased). The court also grants the widow of the deceased **Margaret Nyambura Waithaka** limited grant *colligenda bona* to gather and collect assets

of the deceased's estate and in the process manage Karen Physiotherapy Services as one of the assets of the deceased's estate and preserve it as a going concern pending the grant of letters of administration intestate.

The Applicant/widow of the deceased shall obtain a full grant under **Section 67 Laws of Succession Act Cap 160** within 120 days from today.

**DELIVERED DATED SIGNED IN OPEN COURT ON 11<sup>TH</sup> OCTOBER, 2018.**

**M.W.MUIGAI**

**JUDGE**

**IN THE PRESENCE OF;**

**Mr. Oyoo with Mr. Odhiambo for the Applicant**