



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 65 OF 2008**

**IN THE MATTER OF THE ESTATE OF CELLINGTON KAGWATHI WANGUMITHE (DECEASED)**

**FAITH WANJA KARUJA (DECEASED).....PETITIONER**

**VERSUS**

**NAOMI WANJIRU GICHINA.....OBJECTOR**

**GRACE KARIMI MAINGI.....APPLICANT**

**RULING**

1. The late **Cellington Kagwathi Wangumithe** (hereinafter “the deceased”) died on 10<sup>th</sup> July, 2007. According to the Chief’s letter of introduction dated 1<sup>st</sup> October, 2007, the deceased was survived by **Faith Wanja Karuja** (wife) and **Maria charlotte Nduta Mbiyu** (daughter).

2. The deceased left the following as his estate:-

- a) NTIMA/IGOKI/4967
- b) NTIMA IGOKI/4696
- c) Motor Vehicle Reg. No. KAW 676N Toyota Saloon
- d) Motor Vehicle KAW 797K Prime Mover Lorry
- e) Trailer No. ZB 5562
- f) 45 Acres of land to be excised from L.R. NO.S/9237/2
- g) Plots No. BAHATI/L/R/S/9237 and 9238
- h) B/AC 0110975149800 Co-operative Bank, Meru Branch

3. The family members agreed that the wife, Faith Wanja Karuja petitions for letters of administration. However, the Objector opposed the grant of letters of administration intestate being made to the petitioner. Nevertheless, the first wife and mother to Maria charlotte, Catherine Uiru, supported the petitioner’s bid and the same was allowed. Ultimately, the grant was confirmed on 26<sup>th</sup> May, 2009 and the estate distributed as follows:-

- |                      |                     |          |
|----------------------|---------------------|----------|
| a) Faith Wanja       | NTIMA/IGOKI/4967    | Absolute |
| b) Moses Gitau Kuria | NTIMA/IGOKI/4696    | Absolute |
| c) Naomi Wanjiku     | M.V KAN 676N        | Absolute |
| d) Naomi Wanjiku     | M.V KAW 797K        | Absolute |
| e) Naomi Wanjiku     | Trailer No. ZB 5562 | Absolute |

- f) Faith Wanja L.R. NO. BAHATI/9237/2 6 Acres
- g) Naomi Wanjiku L.R. NO. BAHATI/9237/2 5.45 Acres
- h) Maria Charlotte Nduta L.R. NO. BAHATI/9237/2 5.45 Acres
- i) Mary Njeri Ngumi L.R. NO. BAHATI /9237/2 2.35 Acres
- j) Maria Charlotte Nduta L.R. NO. BAHATI /9238 5 Acres

4. The Petitioner and the Objector were appointed as joint personal representatives.

5. The Petitioner died on 1<sup>st</sup> June 2009. By an application dated 12<sup>th</sup> January, 2010, the applicant who is the mother to the petitioner applied to be appointed legal representative and for rectification of the grant. This was objected to by Maria Charlotte Nduta who wanted the substitution to be done to her name on the grounds that the applicant and her son are not beneficiaries to the deceased's estate. The said application was spent as the applicant died leaving her son Chrispinus Ombati Nyakundi behind.

6. The said Chrispinus Ombati filed an application on 21<sup>st</sup> May, 2014, seeking orders that he be granted leave to withdraw any and all the claims he had against the estate and that he be paid Kshs.600,000/= .

7. On 5<sup>th</sup> June, 2014, one George Kuria Ngumi, a brother to the deceased, asked the Court to appoint him co-administrator of the deceased's estate in the place of the petitioner who had passed on and that the properties distributed to the petitioner be transmitted to him to hold in trust for his son, **Lewis Ngumi Kuria** (minor).

8. This was based on the grounds that before her death, the petitioner had categorically stated that upon her demise, her share of her husband's estate should go to the said minor. This was supported by the affidavits of one, **Dorothy Cirindi Njeru** and **Pastor Joshua Mwita**.

9. That application was opposed by **Maria Charlotte** on the ground that, that issue was never raised in a family meeting held on 2<sup>nd</sup> July, 2009. That in that meeting, it was agreed that one **Grace Karimi** would continue to live in the house of the deceased petitioner for her lifetime and that **George Kuria Ngumi (hereinafter "the applicant")** did not object to that arrangement but only asked for Kshs.100,000/=.

10. A Limited grant ad litem over the estate of the deceased petitioner was on 2<sup>nd</sup> August, 2017 granted to **Maria Charlotte (hereinafter "the respondent")**. She thereupon made an application dated 5<sup>th</sup> March, 2018 to be appointed as legal representative of the deceased petitioner. She contended that, ever since the Petitioner died on 1<sup>st</sup> June, 2009, the estate has been lying undistributed and that as the only surviving child of the deceased, she should be allowed to administer the estate of her late father.

11. It is these two applications dated 5<sup>th</sup> June, 2014 and 5<sup>th</sup> March, 2018 respectively that this ruling relate. I have carefully considered the affidavits on record and the submissions of learned counsel. The two applications are for the substitution of an administrator of a confirmed grant. Under **section 47 of the Law of Succession Act, Cap 160 of the Laws of Kenya**, this court has jurisdiction to make all necessary orders for the ends of justice in matters relating to estates of deceased persons.

12. It is not in dispute that the petitioner, who was granted the letters of administration alongside her co-wife, is deceased. In **Andrea Ruithibu R.Kanyiri v Teresia Njoki Mbugu [2016] eKLR** the court quoted with agreement the sentiments of **Musyoka J** in **In the matter of the estate of Edward Kanyiri Kunyiha (Deceased) (2013) e KLR** wherein he held that:-

*"Regarding the death of the co-administrator, the position is that the grant...has become inoperative. The grant was made jointly to the applicant and his mother, who has now died. It was intended that the two act together in the administration of the estate. A grant is a certificate. It is issued to a particular person or persons. If the holder of the grant dies the grant becomes useless, as it cannot be transferred to another person. If it was made to two persons and one dies it becomes inoperative. Under section 76 of the Law of Succession Act, such grant is liable to revocation. It should be revoked and another grant made."*

13. A similar opinion was expressed in the **Estate of Simon Nguqi Nganga (Deceased) (2013)e KLR:**

*"The matter of the death of a co-administrator cannot be dealt with as a rectification or review of the certificate of confirmation of grant. It is more fundamental. It touches on appointment of administrators. The grant....was made to two persons. It is expected that the two are to act jointly at all times with respect to the administration of the estate. With the death of one of them, the grant becomes useless as the surviving sole administrator cannot act on the basis of a grant which still bears the name of a dead administrator. .... Since the grant has become useless and inoperative, it ought to be revoked and fresh appointments of administrators be made. The surviving administrators cannot even use the grant, as it is useless, to seek the orders that the applicant now seeks in this application."*

14. I associate myself with the sentiments expressed above. The co-administrator in this matter is long dead. The certificate of confirmation cannot be effected without an appointment of a co-administrator.

15. Accordingly, the grant issued on 23<sup>rd</sup> January, 2009 is hereby revoked. Since the estate cannot remain unadministered, an administrator has to be appointed to finalize the administration.

16. The record shows that on 9<sup>th</sup> March, 2015, prayer number 1 of the applicant's application was allowed having the effect of appointing him as a co-administrator. However, with that grant having been revoked, the court is at liberty under **section 66 of the Law of Succession Act, Cap 160 Laws of Kenya** to appoint a suitable administrator.

17. I note that **Naomi Wanjiku Gichina** was a wife of the deceased in this matter. It is not clear whether there is any other widow of the deceased who is still alive. The only other survivor is the respondent who is a daughter of the deceased. Accordingly, the proper persons to administer the estate of the late **Cellington Kagwathi Wangumi** are his widow and daughter, **Naomi Wanjiku Gichina** and **Maria Charlotte Nduta**, respectively.

18. One other thing is the mistaken believe that anyone can attempt to "*take over*" or "*inherit*" the shares that were distributed to the deceased petitioner within these proceedings. That cannot be the case. One has to take out separate and independent proceedings to succeed her estate. Her share having been properly identified and distributed to her as per the Certificate of confirmation dated 27<sup>th</sup> May, 2009, the same forms an independent and separate estate from the estate herein.

19. Accordingly, this court cannot rule on the issue of the alleged bequest by Faith Wanja Karuja in these proceedings. That can only be dealt with in a separate succession cause for her estate.

20. In this regard, the application by **George Kuria Ngumi** is dismissed in its entirety while prayer 1 of the application by **Maria Charlotte Nduta** succeeds. A fresh Certificate of confirmation of grant is hereby issued with the estate being distributed as per the certificate of confirmation dated 27<sup>th</sup> May, 2009. However, the shares of **Faith Wanja Karuja** shall be indicated to be held by her estate.

21. This being a family matter, I will make no orders as to costs.

It is so ordered.

**Signed at Meru by me**

**A. MABEYA**

**JUDGE**

**DATED and DELIVERED AT MERU THIS 4TH DAY OF OCTOBER, 2018**

**F. K. GIKONYO**

**JUDGE**