



**REPUBLIC OF KENYA**

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

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1292 OF 2017**

**IN THE ESTATE OF RUGA GITUKU (DECEASED)**

**HANNAH GATHONI RUGA .....1<sup>ST</sup> PETITIONER/APPLICANT**

**VERSUS**

**JOYCE WANGECHI RUGA .....2<sup>ND</sup> PETITIONER/RESPONDENT**

**R U L I N G**

1. The deceased herein **Ruga Gituku** died intestate domiciled in Kenya on the 3<sup>rd</sup> of September, 2017 at Aga Khan Hospital Nairobi. He left a vast estate, a loan with a local bank which stood at Kshs.77,000,000/- at his death and fairly larger family that is working at cross purpose for now to the detriment of the estate.
2. The deceased had two wives in his life time. His first **wife Cecilia Wangui Ruga** sired 12 children who are all adults now. She died in February 1994.
3. His second wife **Hannah Gathoni Ruga** whom he married on 11<sup>th</sup> of May 2002 has 4 children with the deceased.
4. The details of the deceased's survivors are as follows;-

**1<sup>st</sup> House:**

1. John Gituku Ruga
2. Patrick Samuel Wanjau Ruga
3. Joyce Wangechi Ruga
4. Jane Ngoiri Waithaka
5. Rose Wanjiku Ruga
6. Margaret Wahito Ruga
7. Esther Wakarindi Ruga
8. Mary Wairimu Ruga
9. Grace Muthoni Ruga
10. Leah Wangui Ruga
11. Nancy Wamuyu Maina

All adults

**2<sup>nd</sup> House:**

12. Hannah Gathoni Ruga (widow)
13. J G R (14 years)
14. M W R (11 years)
15. R W R (18 years)
16. J W R (4 years)

5. Before court are three applications dated 19<sup>th</sup> March, 20<sup>th</sup> April and 15<sup>th</sup> August 2018 all filed by the applicant. The said applications were supported by various affidavits and annexures. The same were opposed with equal force as several affidavits and annexures were filed in opposition.

6. The bone of contention can be summarised as being the management of the estate; mainly collection of the rent, utilization of the same, maintenance of the widow and minor children and what comprises list of assets and income therefrom.

7. It is noteworthy that two children of the deceased namely Grace Muthoni Ruga and Joyce Wangechi Ruga moved the court for Limited Grant of Letters of Administration ad litem which was issued on 16<sup>th</sup> November, 2017.

8. The widow was aggrieved by the move hence her first application where she claimed to have been left out of the administration of the estate, having been evicted from her matrimonial homes in Nairobi and Mukurweini being L.R. No. 20/7/176 Harambee Estate and Gikondi/Kiirungi/681 respectively. She further sought for Kshs.120,000/= being monthly upkeep and school fees for her children.

9. The parties have placed before court accusations and counter accusations against each other. However, since the inception of the suit the issues have been narrowed down with cooperation amongst the beneficiaries as follows:

**1. The widow remains to occupy L.R. No. 20/7/176 Harambee Estate.**

**2. The Limited Grant of Letters of Administration ad litem was rectified to have a representative of the 1<sup>st</sup> house and the widow as the interim administrators.**

**3. A joint account in the names of the interim administrators was opened being account No. [...] Equity Bank Mukurweini and some monies have been deposited since.**

**4. It is evident that bills of the estate are being settled and the bank loan being serviced.**

10. But all is not well as the two administrators do not seem to co-ordinate or work well together due to the mistrust between the two houses. Further some tenants are still in arrears, either on their own or in collusion with some beneficiaries and it appears to me that the estate is wasting away.

11. It is also not clear whether all the assets of the estate have been accounted for. Secondly both the administrators collect rent at some point and have not account for the same from the time the deceased died to the time the joint account was opened.

12. The duties of the administrators in law is to collect and preserve the estate. Any monies to be spent can only be spent with the authority of the court which is not the case here. The Administrators have a legal duty and are reminded that the said duty has to be strictly complied with in order for each of the beneficiaries to benefit and for the estate to be brought to order to allow distribution.

13. Taking all factors into consideration I hold in abeyance two issues which have been raised and will be dealt with as directed late in this ruling:

**i. The occupancy of the Mukurweini home Gikondi/Kiirungi/681.**

**ii. Payment of school fees and maintenance.**

For the reasons that the occupation of Mukurweini by both families for now is not doable as each claims the same to be their home.

As for school fees and maintenance, the widow has admitted to receiving some rental income from her own properties, which she can utilize as the rent as accounted for now can barely meet the loan and utilities necessary to allow preservation of the estate.

14. I further direct that each of the interim administrators do file a list of assets, details of tenants and how much each tenant pays and arrears if any within 7 days.

15. And since it is crystal clear that the administrators cannot fairly administer the estate and account, due to the mistrust and acrimony between the two houses, the two to agree and appoint a reputable firm that will manage the entire estate and account to the parties through their advocates, within the next 7 days.

16. Issue of up keep and school fees for the minors will be revisited after 90 days. The widow is to file & serve an affidavit of their needs with accompanying documents.

17. Occupancy of the Mukurweini house by all family members and the modality of such occupation to be discussed and proposals filed in court within 90 days.

18. The administrators had been directed to move the court for grant of representation within 30 days which time has lapsed. The time is extended by another 30 days.

19. A mention date to be agreed upon where further directions will be granted. Costs in the cause.

**DATED, SIGNED and DELIVERED at NAIROBI this 7<sup>TH</sup> DAY OF DECEMBER, 2018.**

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**ALI-ARONI**

**JUDGE**