



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 361 OF 2011**

**IN THE MATTER OF THE ESTATE OF DN (DECEASED)**

**JMK.....1<sup>ST</sup> PETITIONER**

**JMM.....2<sup>ND</sup> PETITIONER**

**- VERSUS -**

**GKM.....OBJECTOR**

**HMM.....1<sup>ST</sup> INTERESTED PARTY**

**WM.....2<sup>ND</sup> INTERESTED PARTY**

**CKM.....3<sup>RD</sup> INTERESTED PARTY**

**RULING**

1. This is a ruling on the Objection dated 20<sup>th</sup> February, 2012 filled pursuant to the order made on 7<sup>th</sup> February, 2012. The grounds upon which the objection was brought were that; the petitioner had not sought the consent of the objector or any other person prior to filing this petition; that the petitioner had long separated with the deceased and did not care about the wellbeing of the deceased.
2. It was further contended that the deceased left a will in which he did not recognize the petitioner. Together with the objection, the objector filed a Petition by way of cross-application and Answer to Petition. She contended that the deceased left her and a daughter by the name BM surviving her. She prayed that she be appointed as administrator of the estate of the deceased being the deceased's mother.
3. The objection was heard by way of viva voce evidence. **OW1 GKM** told the court that the petitioner was not married to her daughter and he never paid any dowry. The deceased had one child BM who is her grandchild. She testified that she was a dependent to the deceased as she was living with and helped her during her illness.
4. **OW2 WMM** was a brother in law to the deceased. He told the court that the deceased lived alone with her child. He knew the petitioner as he was married to the deceased but they had separated for over 5 years before her demise. He supported the objection of his mother in law because she was living with the deceased before her demise.
5. **OW2** produced a will that was left by the petitioner and he sought that it be executed. He was present when it was made by the deceased and he had attested it as had other witnesses.
6. The petitioner did not file any document in opposition to the objection and did not attend the trial. Having considered the record and the testimonies of the witnesses, the only issue for determination is ***whether the objection should be upheld.***
7. One of the grounds upon which the objection was brought was that the deceased left a Will in which he did not recognize the petitioner. **OW2** appeared and testified that the deceased made a will before she died. That she made and signed the Will in the presence of her brothers and sister as well as himself. They all signed the said Will. He produced the Will as **OExh.1**.
8. I have looked at and examined the said Will. It bears what is said to be the signature of the testator, the deceased in this case. It has four signatures of people said to have been present when it was made and who witnessed the testator execute the same. One of them appeared and testified as **OW2**.
9. It should be recalled that when the objection was filed and a copy of the Will exhibited and served upon the petitioner, he never filed any

response thereto. The testimony of **OW2** was consistent and was not controverted. I make a finding that the deceased died testate and her estate should be inherited as per the Will. In the Will, there is an indication that the deceased had appointed her brother **CKM** as the 'Trustee' and therefore the executor of the Will.

**10.** Accordingly, this court finds the objection to be meritorious and is allowed. The grant of Probate with a Will annexed is hereby issued to **CKM**. He is to effect the Will as follows: -

a) **L. R. No. Nkuene/Mikumbune/[Particulars withheld]**

- **Half share to CKM to hold in trust for BM**

b) **Motor Vehicle Reg No. [Particulars withheld]**

- **GKM**

11. I will make no orders as to costs.

**SIGNED at Meru me: -**

**A. MABEYA**

**JUDGE**

**DATED and DELIVERED this 6th day of December, 2018.**

**F. GIKONYO**

**JUDGE**