



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 591 OF 1991**

**IN THE MATTER OF THE ESTATE OF WILSON WAIYAKI GITHIEYA (DECEASED)**

**RULING**

1. The application for determination is dated 27<sup>th</sup> November 2014. It seeks that a dead widow of the deceased be substituted by her daughters.
2. The application is opposed. It is argued that the applicants ought to have first obtained representation to the estate of their mother before seeking substitution herein. Secondly, it is stated that the estate ought to be governed by African customary law which excluded daughter from benefit.
3. The deceased herein died in 1977. Representation to his estate was made to the Public Trustee. The said grant was confirmed on 9<sup>th</sup> June 1994. The estate was distributed between the widow and her three sons. The daughters were not catered for. The widow took 40% of the estate, leaving 60% thereof to be shared equally between the sons. The applicants now seek to take their mother's place as beneficiaries of the 40% of the estate that devolved upon her.
4. The estate herein was distributed in 1994. The matter of distribution cannot be revisited in the manner proposed in the instant application. In any event, the court became *functus officio* so far as that issue is concerned.
5. What the applicants should do is to apply for representation to the estate of their mother, and have their mother's share of the estate herein devolved upon her estate so that the same can be shared amongst those entitled.
6. I agree that there is no merit in the instant application. I hereby dismiss the same, but I will not grant costs to the respondents.

**DATED, SIGNED and DELIVERED at NAIROBI this 3<sup>RD</sup> DAY OF FEBRUARY, 2017.**

**W. MUSYOKA**

**JUDGE**