



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**SUCCESSION CAUSE NO. 509 OF 2002**

***In the matter of the Estate of JOEL MWAURA WAWERU (DECEASED)***

**VERONICA MUTAVE MWAURA.....PETITIONER/RESPONDENT**

**VERSUS**

**JOHN MAINA MWAURA..... 1ST RESPONDENT/APPLICANT**

**ANN MAINA MWAURA..... 2ND RESPONDENT**

**R U L I N G**

1. This is a ruling on the application dated 20/04/2016 seeking for substitution of the petitioner/beneficiary one Delomon Mwangi Mwaura, deceased. The applicant John Maina Mwaura states that the late Delmon Mwaura was his brother and that he passed on 9/07/2015. The only ground relied on by the applicant is that unless the orders are granted, he will not be in a position to prosecute this matter.
2. The respondent/petitioner Veronica Mutave Mwaura opposes the application relying on her replying affidavit. She puts forth only one ground to the effect that the applicant was not the biological son of the deceased. That he was born out of wedlock when his mother had ran away from the deceased's home leaving her 7 children with the respondent who raised them up. The respondent adds that the applicant should not inherit any property from the deceased for the reason that the applicant is not his child.
3. This case has a long history. The deceased was polygamous with three houses and nineteen children as seen in the court record especially in the ruling of D.S. Manjanja, J. dated 30/04/2013. In that ruling, the applicant had sought to revoke the grant together with his sister Anne Wairimu Mwaura which application was dismissed. The applicant and his sister had alleged that the grant was obtained fraudulently or without disclosure of facts material to the case.
4. This succession cause has already been finalized in that the grant was confirmed on 10/03/2006. The property was distributed to the beneficiaries who included the respondent as the surviving widow and children of the other two houses. Of significance is that the applicant was not a beneficiary in this cause and has not appealed against the decision.
5. This application seems to be designed to sneak into this succession cause as a beneficiary whereas his application to revoke grant was dismissed. The surviving administrator Veronica Mutave Mwaura suffices to administer the deceased's estate for the rightful heirs of Delomon Mwangi Mwaura be substituted and grant executed.
6. With this background, the application to substitute the co-administrator/beneficiary by the applicant

does not make sense. Furthermore, it has not been disclosed whether the deceased beneficiary had a family who could be interested in his share.

7. I have also perused the application and it is not shown whether the applicant has complied with the law as to substitution of a deceased person in succession proceedings. The applicant did not annex any evidence to prove that he has been appointed a personal representative of the deceased.

8. This is a legal requirement before stepping into succession proceedings in the existing circumstances.

9. I find no merit in this application and also find that it is not in compliance with the law. It is hereby dismissed with costs to the applicant.

10. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 7TH DAY OF MARCH, 2017.**

**F. MUCHEMI**

**J U D G E**

**In the presence of:-**

**Applicant**

**Respondent**