REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1157 OF 1997

IN THE MATTER OF THE ESTATE OF PETER KARANJA KIONDO (DECEASED)

RULING

1. This Ruling relates to two (2) applications one is dated **13th June 2016** and the other is dated the **10th November 2016**. The summons dated 13/6/2016 is brought under Rule 49 and 73 of the Probate and Administrative Rules. The applicants are **Mary Wanjiku Karanja** and **Daniel Karanja Muigai** they seek the following order;

> **i. That this Honorable court be pleased to substitute and appoint Mary Wanjiku Karanja and Daniel Karanja Muigai as joint administrators of the estate of Peter Karanja Kiongo (deceased) in place of Muigai Wakaruma, Ngotho Karuma, Leonard Kiongo Karuma and John Kabingu who are all deceased.**
>
> **ii. The cost of this application be provided for**.

2. The application was based on the grounds that the administrators, Muigai Wakaruma, Ngotho Karuma, Leonard Kiongo Karuma and John Kabingu are now deceased and that the administrators had not distributed the estate of the deceased and now the estate has no administrators. That it is the interest of justice that the substitution and appointment sought for be granted to enable distribution of the deceased's estate to the beneficiaries.

3.The applicants in their supporting affidavit dated the **13th June 2016** aver as follows; that they are the daughter and son to the deceased administrator. That a confirmed grant was issued to Leonard Kiongo, Muigai Wakaruma, Ngotho Karuma and John Kabingu on 16th May 2006 and that there is a pending application for revocation against Muigai Wakaruma that was filed on 17th March 2007 and now that Muigai Wakaruma is deceased. That a vacuum in the administration of the estate has been created, thus it would be in the interest of justice that they be appointed as administrators so as to distribute the estate of the deceased.

4. There is a written consent filed by **Eunice Wakanyi Peter**, one of the beneficiaries, consenting to the application to be substituted as joint administrators of the estate of the their late father Peter Karanja Kiongo in place of Mungai Wakaruma.

5. The second application dated **10th November 2016** is filed by **Lilian Kabura Kiongo** she seeks the following prayers,

> **i. That the grant of letters of administration (intestate) issued to Mungai Wakaruma by this Honourable court on 24th May 1990 and confirmed on 16th May 2006 be revoked.**

ii. That Lilian Kabura Kiongo be substituted as the adminstratix of the deceased estate for the purpose of distributing the estate of the deceased.

iii. That the cost of this application be paid out of the estate.

6. The application was grounded on the following grounds; that the late Mungai Wakaruma (deceased) passed away on 5th March 2016 as the only sole surviving administrator of the estate of Peter Karanja Kiongo (deceased) and that the grant issued on 24th May 1990 was confirmed by this court on 16th May 2006. The applicant seeks that the court revokes the grant of Letters of Administration issued to Mungai Wakaruma (deceased) to substitute him with the applicant as the Administratrix of the estate of the Peter Karanja Kiongo. That it is the only fair and just and in the best interest of the dependents that the orders sought should be granted.

The applicant swore a supporting affidavit dated the 10th of November 2016 stating that she is one of the widows of the late **Leonard Kiongo Karuma** and that she has authority from her co-wife. That the respondent was issued with letters of administration of the estate of the deceased, Peter Karanja Kiongo on 24th May 1990 and confirmed on 16th May 2006. The respondent later on died on 5th March 2016 and as such the estate has no administrator.

DETERMINATION

7. The issue for determination is whether the applicants can be substituted as administrators in place of the deceased Mungai Wakaruma. The applicants in both applications seek to be named as administrators in place of the last deceased administrator Mungai Wakaruma. It is important to point out that the Law of Succession Act Cap 160 does not expressly provide for the substitution of an administrator in cases where no administrator is left in the estate. Section 81 of Cap 160 provides for vesting of the powers and duties of personal representatives in the survivor or survivors of a dead personal representative. However, the above provision as expressed by Hon. Justice Musyoka do not apply in a case where the estate has no surviving administrator. What is before me is a situation where no substitution can be effected as the grant already issued is defective and inoperative and hence can be revoked under section 76 (e) on the courts own motion. I am persuaded by the decision by Hon. J Musyoka in, ***In re Estate George Ragui Karanja (Deceased) [2016] eKLR*** and thus revoke the grant issued.

8. The next question is who should be appointed as the new administrators to the deceased's estate. On this am guided by **Section 66** of the **Law of Succession Act**. The said section provides that-

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-

(a) ***surviving spouse or spouses, with or without association of other beneficiaries;***

(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

(c) the Public Trustee;

(d) creditors

9. The applicants are a wife to one of the beneficiaries, a daughter to the deceased and a son to the deceased administrator. Part V of the Law of Succession Act gives the order of priority in intestate administration. Part V also outlines persons entitled in intestacy succession as children of the deceased, grandchildren, parents, siblings and individuals who are in the nearest degree of consanguinity up to the sixth degree. Wives of beneficiaries can only claim if they have been granted letters of administration for

their husband's estate. It is paramount that I point out that, with regard to the estate of Leonard Kiongo Karuma, a Succession Cause No. 199 of 2013 has been filed, Esther Wahu Kiono and Lilian Kabura Kiongo have sought to be named as administrators of the estate of the deceased who died on 1st February 1996. There was no grant attached to show that Esther and Lilian have been appointed as administrators of the said estate of Leonard Kiongo Karuma. This then translates that the closest and legitimate administrators would be the daughter and son of the deceased. I therefore grant letters of administration to **Mary Wanjiku Karanja** and **Daniel Karanja Muigai** to be the administrators of the estate of Peter Karanja Kiongo. A fresh grant to issue in their names. No costs. It is so ordered.

Dated signed and delivered this **12th** day of **July 2017**

R. E. OUGO

JUDGE

In the presence of;

Mr. Isundu h/b for Mr. Kinyanjui for the applicant

Respondent Absent

M/s Charity Court/ clerk