



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 100 OF 2015**

**(Formerly Naivasha Succession cause No. 198 of 2009)**

**In the matter of the estate of CHARLES NJUGUNA MUNGAI.....DECEASED**

**AND**

**FAITH NYAMBURA NJUGUNA.....1ST PETITIONER**

**PAUL MUNGAI KAHARE.....2ND PETITIONER**

**R U L I N G**

The Petition for grant of letters of administration was filed by **Faith Nyambura Njuguna** and **Paul Mungai Kahare** (the Petitioners) both of them related to the deceased as wife and brother respectively. A grant issued in their joint names on 22/3/10. However on 6/10/10 an objection was filed together with a Cross-Petitioner by **Lucy Njeri Mbiu** (the Objector/Cross-Petitioner).

The said Objector describes herself as the 1st widow of the deceased, having married him in 1963. She claims that the Petitioners herein surreptitiously filed the succession cause, thereby excluding her.

In the first Affidavit/ Response, the 1st Petitioners dismissed the Objector as an imposter, never married to the deceased, asserting further that the 1st Petitioner married the deceased and cohabited with him since 1969 until his death. 1st Petitioner asserts that the couple got 11 children during that period. For his part, the 2nd Petitioner confirms in his affidavit that the Objector was indeed married to the deceased in 1963 and that the marriage was still subsisting at his demise. He further states that the 1st Petitioner has 10 children as a second wife of the deceased but the Objector has none.

The 1st Petitioner filed a further affidavit stating that she wed the deceased under Kikuyu Customary Law in 1969 and had 11 children with him, and that the Objector only appeared after the death of the deceased. That the land comprising the estate of the deceased was property acquired by the deceased and herself. The rest of the affidavit is dedicated to the question of distribution of the estate. The parties' advocates made oral submissions which mainly reiterated the evidence contained in the respective affidavits.

I have considered the affidavits filed and oral submissions and take the following view of the matter. This is not the first time that the Objector has raised her claim since the death of the deceased. On 23/9/2010 the Chief North Kinangop Location and a panel of elders entertained a similar dispute. They ruled against the Objector even while admitting that she had been married to the deceased but left the deceased and went her way some 42 years earlier.

In his letter of introduction that was used to commence the succession cause, the said Chief appears to have been more interested in proposing distribution rather than indentifying possible heirs. The 11 children of the deceased were not mentioned at all, until the Objector came up with her claim. A brother of the deceased and 2nd Petitioner herein, admits in his affidavit that his deceased brother indeed was married to the deceased in 1963 but that, without divorcing her, he later took on the 1st Petitioner as a wife later and got 10 children with her. He too dwells on the question of distribution.

The evidence by the 2nd Petitioner in my view supports the Objector's assertion. Equally the proceedings before the chief and elders annexed to the 1st Petitioner's last affidavit tend to confirm the status of the Objector. The Objector was married to the deceased, on the evidence tendered, but it would appear she had left the home by the time the deceased married the 1st Petitioner under customary law. By dint of the definition of 'wife' in Section 3 (1) of the Law of Succession Act the Objector remained a wife to the deceased. Possibly, the fact that she could not bear children may have led to the deceased's action of taking on a second wife but he did not divorce her. Hence the marriage was still subsisting at the time of the death of the deceased.

The 1st Petitioner may well have believed that the decision of the elders was binding, and hence did not, in filing the subsequent succession cause include the Objector. Possibly, no fraud was intended, but it is quite surprising that none of the children of the deceased are mentioned in the papers filed with the Petition. In light of all the foregoing, I would allow the objection and order that the grant issued on 22nd March, 2010 be rectified to include the Objector as the 3rd Petitioner.

Equally, I direct that before the summons for confirmation filed on 16/9/10 is set down for hearing, the Chief North Kinangop Location confirms by way of a letter, the identifies of all the children of the deceased who survived him. The matter is to be mentioned for this purpose before the Deputy Registrar on 17th June, 2016.

Parties will bear own costs.

Delivered and Signed this 3rd day of June, 2016.  
In the presence of:  
Mr. Geno holding brief Mr. Waigwa for the Objector  
N/A For the Clerk Mr. Barasa  
Court

C. MEOLI  
JUDGE