



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIVASHA**  
**SUCCESSION CAUSE NO. 149 OF 2015**  
**(Formerly Nakuru Succession Cause No. 333 Of 12)**

**In The Matter Of The Estate Of Jamlick Karanja Muiruri.....Deceased**

**JAMES MUIRURI KARANJA.....1<sup>ST</sup> APPLICANT/OBJECTOR**

**PETER KAMAU KARANJA.....2<sup>ND</sup> APPLICANT/OBJECTOR**

**PETER KARANJA KINUTHIA.....3<sup>RD</sup> APPLICANT/OBJECTOR**

**VERSUS**

**JOSHUA NJUGUNA MUIRURI.....RESPONDENT**

**R U L I N G**

1. The parties to the application filed on 22/5/12 agreed by consent to dispose of the same by way of filing affidavits. Thereafter, oral submissions were made in court. The oral submissions merely reiterated the affidavits.
2. I have read through the affidavits and the submissions. It is not in dispute that the deceased was survived by several children including the 3 Applicants/Objectors and their sisters **Mary Mwihaki Karanja** and **Maria Wangui Karanja**. On the face of it, the deceased had at least five parcels of land in the **Mwihiringiri** area at the time of death.

It is not disputed that the Petitioner, a brother to the deceased herein filed for and obtained letters of administration, confirmed on 9<sup>th</sup> January, 2012 in respect of the estate of the deceased

3. Whereas the deceased was survived by several adult children, none of them were involved in the succession cause or appointed as administrators. The three applicants dispute the Petitioner's authority to file the proceedings on their behalf while the Petitioner claims that the deceased had appointed him for that purpose, to execute his wishes. There was no will left by the deceased nonetheless, hence the deceased died intestate. It does seem however that a panel of elders purported to distribute the estate of the deceased via their decision in Land Dispute case No. **NIDT 122/09**, which the Petitioner now calls to his aid. Needless to say, the said decision was a nullity for want of jurisdiction.
4. Under section 66 of the Law of Succession Act, a brother to a deceased person ranks lower in priority than a child of a deceased person who survives the deceased. Whether or not the Petitioner was acting in good faith, as he claims, to protect the interests of the deceased's daughters, it was erroneous for the court to allow him to solely take over the administration of the property of the deceased, without getting solid assurance that the children of the deceased had

waived their right to apply.

5. The Applicants have cited his failure to include all the properties of the estate in the initial application as evidence of the lack of good faith on the part of the Petitioner. I cannot see evidence of deliberate fraud but the proceedings in my considered view were defective in substance, for the reason that the provisions of Section 66 of the Law of Succession Act were not given proper application.
6. Such application would have pre-empted the sort of dispute now before this court with the Applicants who are beneficiaries of the estate denying authorizing the Petitioner to act on their behalf. A further irregularity is that the confirmed grant appears to endorse to the letter, the purported “award” by the elders’ panel earlier referred to, even though the said decision is itself a nullity.
7. The confirmed grant in the circumstances cannot stand is hereby revoked. The court will therefore order that a fresh grant be issued in the names of the 1<sup>st</sup> and 2<sup>nd</sup> applicants herein, and their two sisters **Mary Mwhaki Karanja** and **Maria Wangui Karanja**. In 3 months from today’s date the said applicants will be at liberty to apply for the confirmation of the grant and to file affidavits proposing the mode of distribution of all the properties which constituted the estate of the deceased at the time of death. Each party will bear its own costs.

Delivered and Signed this 3<sup>rd</sup> of **June, 2016**.

**C. MEOLI**

**JUDGE**

In the presence of:

Mr Geno holding brief for Mr Waigwa Ngunjiri for the Petitioner

No appearance for the Objector