



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

SUCCESSION CAUSE NO. 672 OF 2015

(FORMERLY CHUKA SPM'S COURT SUCC. CAUSE NO.79 OF 2015)

IN THE MATTER OF THE ESTATE OF THE LATE MUGAMBI MUKETHA (DECEASED)

AND

JANET GAAJI MUCHUNKU.....PETITIONER

- VERSUS -

LEAH MUKWANJIRU MWIANDI.....RESPONDENT

R U L I N G

1. Mugambi Muketha (hereinafter "*the deceased*") died in or about 1960. On 27th April, 2015, the Assistant Chief of Karongoni Sub-location introduced Janet Gaaji Muchunku as a daughter of the deceased for purposes of commencing these proceedings. In pursuance thereof, Janet Gaaji Muchunku lodged a Petition for Letters of Administration before the Chuka Principal Magistrate's Court on 27th July, 2015. In Form No. P & A 5, she named herself and one Nkongwe Mwititi James as the only beneficiaries of the estate. She also disclosed that the only asset of the estate was Mwimbi/Kiraro/261.

2. Before any grant could be issued, Leah Mukwanjiru Mwiandi (hereinafter "*the Objector*") objected to the Petition by way of Cross-Petition for grant. She therein contended that the said Janet Gaaji Muchunku was not related to the deceased in anyway whatsoever. She further contended that she, the objector, was related to the deceased by reason of being a wife to the deceased's brother, one Mwiandi Wa Riro. In answer to the said Cross- Petition, Janet Gaaji Muchunku insisted that she was the rightful person to Petition for the grant as she was a daughter of the deceased. When the matter came up for directions on 14th January, 2016, the court directed that the matter be heard through viva voce evidence. The court also issued summons to the Assistant Chief who issued the letter of introduction to Janet Gaaji and the Sub-area to attend court and shed some light.

3. The two witnesses attended court on 7th March, 2016 and testified. The matter was then adjourned to 12th May, 2016 for further hearing. However, on that day, it transpired that the said Janet Gaaji was sick and the matter did not proceed. The matter was adjourned to 14th July, 2016 when sadly, the court was informed of the untimely demise of Janet Gaaji. A death certificate No. **(details withheld)** was produced by a member of the public, one William Kabundu who informed the court that he had been sent by the clan to inform the court about the said death and to inquire on the way forward. It is then that Mr. Kijaru learned Counsel for the Objector urged the court to exercise its discretion under sections 66 and 39 of the Law of Succession Act, Cap 160 Laws of Kenya (hereinafter "*the Act*") and appoint the Objector as the Petitioner. The court reserved its ruling on that issue. This then is the court's decision.

4. Section 66 of the Act gives a guidance on who is to be appointed an administrator of the estate of a deceased person in the order of preference. The section provides:-

1. ***"66. 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; and

d. Creditors.

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will."

On the other hand, section 39 of the Act gives the order of priority on how an intestate estate is to devolve.

5. From sections 66 and 39 aforesaid, I agree with Mr. Kijaru that this court has the power to appoint a Petitioner. However, considering the nature of the pending proceedings and the evidence on record, I am hesitant to exercise the discretion conferred in those sections in the manner suggested by learned Counsel. Before court are two protagonists with completely different interests who have made counter allegations against each other as to their intentions in relation to the estate of the deceased. Each claims the other is not entitled to petition for the grant of letters of administration intestate. The evidence of the Assistant Chief and the sub-area point towards the existence of a serious issue that need to be determined after full trial. Acceding to Mr. Kijaru's invitation would, in my view, be determining the proceedings in favour of one party, the objector, before hearing the entire matter. The death of a Petitioner is not the end of such Petitioner's interests or rights in the estate. Obviously, the Petitioner's rights devolve to her estate. Since her rights were personal and have not been extinguished, the right procedure would be for the administrator of her estate or another beneficiary of lesser priority to apply to be substituted to the position of Petitioner in her place.

6. In the circumstances, I decline to accede to Mr. Kijaru's application. Let another interested beneficiary of the estate of the deceased or the children of the deceased make an appropriate application to be substituted in her stead. This matter will now be mentioned after sixty (60) days to confirm compliance.

It is so ordered.

DATED and delivered at Chuka this 6th day of October, 2016.

A. MABEYA

JUDGE

Ruling read and delivered in open court in the presence of all the parties.

A. MABEYA

JUDGE

6/10/2016