

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 124 OF 2010

IN THE MATTER OF THE ESTATE OF JOSEPH MUTHINI KIBWAA – DECEASED

ALICE SYOVATA MUTHINIPETITIONER (NOW DECEASED)

AND

ROSE SYOMBUA MUTHINIBENEFICIARY/APPLICANT

RULING OF THE COURT

1. The Summons for Substitution of Petitioner herein is dated **1st July, 2014**. The Summons prays that the Applicant **Rose Syombua Muthini** be appointed as the Administratrix of the estate hereof to substitute the Petitioner **Alice Syovata Muthini**, who has since passed on. The applicant's case is that she is an adult female of sound mind hence competent to swear this affidavit, and that she was lawfully married to the deceased. The said marriage was under the Kamba Customary Law. The marriage was blessed with three (3) children namely; **Josephine Nzilani Muthini, Robert Kibwaa Muthini and Nzilani Muthini**. That the Petitioner in this cause, **Alice Syovata Muthini**, has since passed on and it is imperative that she be substituted. The applicant is the only surviving spouse of the deceased and therefore next in line to succeed his estate. In Form P&A, the applicant has been named as a beneficiary and wife, and it would be in the interest of justice to substitute the deceased with the applicant for purposes of carrying the Succession herein to completion. The Petitioner had already been divorced by the deceased and a Certificate of making Decree Nisi Absolute issued on **12th November, 1993**.

2. The application and Notice of hearing of the same was served pursuant to the affidavit of service dated **9th June, 2016** and filed herein on **13th June, 2016**. However, during the hearing of the application only the applicant and two other beneficiaries attended. I have noticed that there are many beneficiaries to the estate and the affidavit of service does not state that all of them were served. However, since the application is not opposed I allow the same as prayed. The applicant will however ensure that during the Confirmation of the Grant all the beneficiaries are personally served and do attend the confirmation proceedings.

Orders accordingly.

DATED AND DELIVERED AT MACHAKOS THIS 15TH DAY OF NOVEMBER, 2016.

E. OGOLA

JUDGE

In the presence of;

Mr. Mwangela holding brief for Ngolya for Applicant

Court Assistant – Mr. Munyao