



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1993 OF 2008**

**IN THE MATTER OF THE ESTATE OF JAMES KAGWIMA GATHU – (DECEASED)**

**LUCY WAMBUI KAGWIMA.....1<sup>ST</sup> APPLICANT**

**ASSUMPTA MUKUHI NJENGA.....2<sup>ND</sup> APPLICANT**

**ROBERT GICHURU KAGWIMA.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**SUSAN WANJIRU GATHU.....RESPONDENT**

**RULING**

1. The deceased James Kagwima Gathu died intestate on 8<sup>th</sup> October 2005. On 20<sup>th</sup> April 2006 his widow Elizabeth Mugure Kagwima petitioned the Senior Resident Magistrate’s Court at Limuru in Succession Cause No. 27 of 2006 for the grant of letters of administration intestate. The grant was issued to her on 21<sup>st</sup> September 2006. When the petitioner proposed a mode of distribution in an application for confirmation it was opposed by Susan Wanjiru Gathu who was the widow of one of the sons of the deceased called George Gathu Kagwima. Subsequently, Susan filed an application before this court to revoke the grant. That application was awaiting hearing when the petitioner died on 7<sup>th</sup> June 2015.

2. On 1<sup>st</sup> March 2016 Susan filed an application seeking she and one of the sons of the deceased called Robert Gichungu Kagwima be appointed as administrators of the estate in place of the petitioner. On 11<sup>th</sup> March 2016 Lucy Wambui Kagwima and Assumpta Mukuhi Njenga (daughters of the deceased) together with Robert Gichungu Kagwima applied to be the ones to replace the petitioner as administrators of the estate. Robert Gichungu Kagwima swore an affidavit denouncing the application of Susan. Lucy and Assumpta were opposed to Susan replacing the petitioner, and Susan was opposed to their application.

3. It is not disputed that Susan was a wife of the late brother of Lucy, Assumpta and Robert and they had children. Susan’s application was opposed because she was not on good terms with the petitioner owing to her opposition to the petition. They also claimed, which Susan denied, that their late brother had another wife with children. In terms of priority, they argued, they were better placed to administer the estate of their father. Their case was that Susan was uncooperative and troublesome, just because she had questioned the fact that the petitioner had filed the petition without reference to her and had also questioned the manner in which some of the properties of the estate had been dealt with.

4. It was submitted by M/S J.M. Njenga Advocates, and it is true, that under **section 66** of the **Law of Succession Act (Cap. 160)** and **rule 7(1) (e) (iii) of the Probate and Administration Rules** the spouse and the children of the deceased have a right and priority to apply for the grant of letters of administration intestate. However, even with that general guide, the court retains the discretion to appoint who to issue the grant to. In doing this, it will consider the best interests of all concerned and the particular circumstances of the case.

5. Secondly, where, like in this case, the spouse had a grant and has passed on, and there are children one of whom has died, but left a widow, it would be reasonable, fair and just to let the widow step into the shoes of her deceased husband for the purpose of determining priority.

6. In conclusion, I appoint Lucy Wambui Kagwima, Robert Gichungu Kagwima and Susan Wanjiru Gathu to step into the shoes of the petitioner Elizabeth Mugure Kagwima and to administer the estate of the deceased James Kagwima Gathu. I direct that these administrators, or any of them, will within 45 days file and serve application for the confirmation of the grant. The served application shall be responded to within 14 days. Thereafter, the parties shall list the matter for directions. On these terms, both applications are allowed. I make no order as to costs.

**DATED and DELIVERED at NAIROBI this 7<sup>th</sup> day of DECEMBER 2016**

**A.O. MUCHELULE**

**JUDGE**