



**REPUBLIC OF KENYA**

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

**PROBATE AND ADMINISTRATION DIVISION**

**SUCCESSION CAUSE NO. 2647 OF 1997**

**IN THE MATTER OF THE ESTATE OF JAMES WAINAINA NG'ANG'A alias WAINAINA NG'ANG'A (DECEASED)**

**RULING**

1. I have perused the Notice of Motion dated 18<sup>th</sup> July 2014 filed by Mary Waithera Marii together with the five affidavits in support, the replying affidavit of Francis Kahuho Wainaina and the further affidavit of Mary Waithera Marii. The deceased to whose Estate these proceedings relate is James Wainaina Ng'ang'a. He died on 21<sup>st</sup> March 1989 intestate, leaving behind the following beneficiaries:-

- |                            |       |
|----------------------------|-------|
| 1. Salome Nyambo Wainaina  | Widow |
| 2. Serah Wanjiku Wainaina  | widow |
| 3. Salome Wanjiru Wainaina | widow |
| 4. Joseph Kimani           | son   |
| 5. Francis Kahuho          | son   |
| 6. Joseph Njau             | son   |
| 7. Peter Kimani            | son   |
| 8. Henry Mukuria           | son   |
| 9. Dancan Thiong'o         | son   |
| 10. Peter Mungai           | son   |
| 11. Philip Ng'ang'a        | son   |

The beneficiaries were all adults.

2. The three widows applied for and were granted letters of administration. The certificate of confirmation of grant issued on 18<sup>th</sup> October 1999 indicates that the grant was confirmed to two widows Serah Wanjiku and Salome Wanjiru, since Salome Nyambo had since demised on 14<sup>th</sup> June 1998. The description of the property according to the certification of confirmation of grant is as per the attached agreement dated 15<sup>th</sup> September 1995. That agreement refers to the family of James Wainaina Ng'ang'a and another Njoroge Nyambura also deceased. It is not clear what the two deceased men had in common.

3. In October 2004 the grant appears to have been rectified to include the alias name of the deceased. It was subsequently rectified two more times first to delete the name of Salome Nyambo who had died and to reflect a different schedule of distribution brought in by Peter Kimani and which excluded the family of Njoroge Nyambura.

4. The application before me seeks for orders that one Mary Waithera Marii and Denham Wainaina Thiong'o be appointed as administrators in place of Serah Wanjiku and Salome Wanjiru who have since

died. In the application, orders are also sought to restrain the Nairobi land registrar from registering any dealings whatsoever, in respect of L.R. Dagoretti/Ruthimitu/21 until this matter is heard, because the family of the late Njoroge Nyambura has a stake therein

5. From the replying affidavit sworn by Francis Kahuho Wainaina on behalf of the beneficiaries from the house of Salome Wanjiru Wainaina, there is no opposition to the substitution of the name of Serah Wanjiku Wainaina with that of Denham Wainaina to represent the beneficiaries from that house.

6. The opposition is directed at Mary Waithera Marii being included as an administrator since Njoroge Nyambura whom she seeks to represent is said not to be related to the deceased herein and is also a stranger to the beneficiaries herein.

7. The schedule in the certificate of confirmation dated 18<sup>th</sup> October 1999 only identifies the wife and children of the three homes of the deceased herein as his beneficiaries. It was not until 20<sup>th</sup> January 2012 that one Peter Ngugi Njoroge filed summon for rectification to bring in the family of Njoroge Nyambura on grounds that there existed an agreement between the two dead men before their demise. That being the matrix of this application I find that it is necessary for summons for rectification dated 20<sup>th</sup> January 2012 and filed in court on 27<sup>th</sup> January 2012 to be heard and for the parties to adduce viva voce evidence to establish the connection between this second family which has cropped up besides the three houses of the deceased, and the Estate of the deceased.

Directions shall therefore issue on the date of ruling accordingly.

**SIGNED DATED and DELIVERED** in open court this **5<sup>th</sup> day of May 2015.**

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**L. A. ACHODE**

**JUDGE**