



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. 4 OF 2013

IN THE MATTER OF THE ESTATE OF ESTHER KABARE.....DECEASED

AND

JOHN KABEGE NJOGU.....PETITIONER/APPLICANT

VERSUS

CICILY WANJIJU KABARE

ANN MUTHONI KABARE

LUCY WANGITHI KABARE

JOSEPH NJUNU KABARE

SAMUEL WACHIRA KABARE

VERONICA MUNENE KABARE

GLADYS MUTHONI GITHAKA.....OBJECTORS

RULING

1. The summons before me is dated 24th June, 2011 and was taken out by **JOHN KADEGE NJOGU**, the applicant herein who applied under **Section 51** of the **Law of Succession Act** to be issued with letters of administration to the estate of **ESTHER KABARE** the deceased.

The grounds upon which the application is made are:

- i. *That the applicant is a grandson to the deceased.*
 - ii. *That the estate of the deceased and the petition was gazetted on 15th day of April, 2011.*
 - iii. *That the objectors who are children to the deceased chased him when his father one Njogu Kabare died.*
2. The Petitioner filed written submissions in support of his application and from the submissions he submitted that the only way of ensuring his interests are well taken care of is if he is granted letters of administration since children to the deceased refused to recognize him despite being a son to

- Njogu Kabare who is now deceased and was a son to Esther Kabare, the deceased herein.
3. The objectors however, objected to the application and a replying

affidavit sworn on 26th July, 2014 and had earlier filed an affidavit sworn on 8th October, 2010 in answer to the citation made by the same applicant. The objectors deposed that the deceased left the following children:

- i. Reuben Githaua Kabare
- ii. Cicily Wanjiku Kabare
- iii. Ann Muthoni Kabare
- iv. Lucy Wangithi Kabare
- v. Joseph Njunu Kabare
- vi. Samuel Wachira Kabare &
- vii. Njogu Kabare

4. The objectors submitted that they have priority to administer the estate pursuant to **Section 66** of the **Law of Succession Act** which gives them priority over the Applicant or anyone else over the estate of the deceased person. They further submitted that the Applicant cannot apply to be administrator to the estate when the real children to the deceased are alive and willing to take up their responsibility. They denied that the Applicant was a son to Njogu Kabare who they asserted died with no wife or children. They have further alleged that the Applicant is a stranger in the estate and did not attend his alleged father's funeral or even the grandfather.
5. I have looked at the submissions made by both sides and the only issue for determination at this stage is who has priority in law to apply for letters of administration to the estate of Esther Kabare (deceased).
6. The provisions of **Section 66** of the **Law of Succession Act** gives preference to certain persons to administer the estate of persons who die intestate. This Court is given final discretion to choose but the law gives general guidelines as follows in terms of priority;
 - i. ***Surviving spouse or spouses with or without association of other beneficiaries.***
 - ii. ***Other beneficiaries with priority in terms of Part V of the Act. Part V of the Act gives children of a deceased priority over the grandchildren.***
7. Furthermore under **Rule 7(1)(e)(iii)** of the **Probate and Administration Rules** the law provides a clear table of consanguinity indicating preferences to be given in intestate situations where a deceased is survived by relatives. The Applicant clearly has no right to apply for letters of administration in the presence of the objectors who have not renounced their rights to apply for letters of administration to the estate of Esther Kabare pursuant to **Rule 26 (2)** of Probate and Administration Rules.
8. The children of the deceased herein have a right and priority to apply for letters of administration to the estate of their deceased mother. The only remedy available to the Applicant is to prove his entitlement as a dependant at the stage of distribution but not at this stage.

Consequently the application dated 24th June, 2011 is disallowed. The objectors' application to have two of them, that is,

- a. Cicily Wanjiku Kabare and
- b. Joseph Njunu Kabare

appointed administrators of the estate herein is allowed. The two named administrators shall proceed to diligently administer the estate of Esther Kabare in accordance with the law. I shall make no order as to costs.

Dated and delivered at Kerugoya this 7th day of July, 2015.

R. K. LIMO

JUDGE

7.7.2015

Before Hon. Justice R. Limo

Court Assistant Willy Mwangi

Cicily Wanjiku

Joseph Njunu

Gladys Muthoni

Lucy Wangithi present

Anna Muthoni

Samuel Wachira

The ruling is signed, dated and delivered in the open court in the presence of the above named parties and in the absence of their counsels.

R. K. LIMO

JUDGE