



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
PROBATE AND ADMINISTRATION DIVISION
SUCCESSION CAUSE NO. 284 OF 2012

IN THE MATTER OF THE ESTATE OF LEAH WANJIRU WAWERU (DECEASED)

LEAH WANJIRU WAWERU.....APPLICANT

DANIEL WAWERU GICHUHI.....1ST ADMINISTRATOR

ELIZABETH MUTHONI KAMAU.....3RD ADMINISTRATOR

R U L I N G

1. The Applicant brought the application dated 15th January 2015, seeking to substitute one of the administrators Lucy Njeri (deceased) who is her mother. The affidavit in support of the summons states that the Applicant's mother was survived by only two (2) daughters. That the deceased was one of the Administrators of the Estate herein and that the 2nd beneficiary of her Estate Salome Nyawira Kioi, has no objection to the Applicant substituting their late mother as the Administrator herein.

2. In her supporting affidavit sworn on 15th January 2015 the Applicant deposes that she is the daughter of Lucy Njeri Kamau who died on 14th July 2014 leaving her sister Salome Nyawira Kioi and herself as her only dependants. That her sister Salome has no objection to the Applicant's name being substituted in place of their late mother in these proceedings and that no prejudice will be suffered by any party if the orders are granted.

3. The Replying affidavit was sworn on 2nd February 2015 by Daniel Waweru Gichuhi the 1st Administrator, on his behalf and on behalf of the 3rd Administrator Elizabeth Muthoni Kamau. The Respondent deposes that the Applicant who is a grandchild of the deceased does not have priority to administer the deceased's Estate as provided under **section 66(b)** of the **Law of Succession Act**. That the Applicant is not the administrator of the Estate of her deceased mother and therefore she has no capacity to exercise the powers of a personal representative under **section 82(2)** of the **Law of Succession Act** for her mother's Estate.

4. The Respondent further avers that the Applicant is not properly on record since she has not entered appearance in the prescribed form under the Succession Act, neither did she seek consent from the administrators or the beneficiaries of the deceased's Estate before filing the present application. That she also did not seek consent in the prescribed form from her sister Salome. He argues that it is not necessary to add a third administrator since the children of the deceased are confident that the two administrators are

capable of distributing the deceased's Estate as per the court's ruling of 3rd October 2014. That the Administrators duly informed the court of the demise of the second Administrator on the date of ruling.

5. The Respondent asserts that the present summons was filed in bad faith and with intention to delay the distribution of the deceased's Estate and that the Applicant has denied the Administrators access of the 2nd Administrator's death certificate for purposes to rectification of grant.

6. Parties filed brief written submissions. Mr. Ngugi Mwaniki for the Applicant argued that there was mistrust between the Administrators of the Estate herein which was demonstrated by the conduct of the Administrators after the death of Lucy Njeri, one of the Administrators, of not bringing the Applicant and her sibling on board. That it is necessary that the Applicant be allowed to substitute their late mother to ensure that their mother's interest in the Estate is not wasted or diluted.

7. Counsel asserted that the Applicant only got into this matter for purposes of ensuring that Lucy Njeri's share of the Estate was well secured, and that beneficiaries ought to be protected. He stated that the court under **Rule 73** of the **Probate and practice Rules** had inherent powers to make orders that the court may deem necessary for the ends of justice to be met.

8. M/s Kiarie submitted for the Respondents that since the children of the deceased Leah Wanjiru Waweru whose Estate is under consideration are all adults, it was not necessary to have a 3rd Administrator and in any case, the children of the deceased have priority under **Section 66(b)** of the **Laws of Succession Act**. As such the deceased's daughters and sons should be given first priority before a granddaughter is considered.

9. Counsel urged further that the Applicant, who had nominated herself for substitution, was not the personal representative of her late mother's Estate, to execute powers of personal representation under **Section 82(a)** of the **Laws of Succession Act**.

10. Counsel contended that neither the deceased's children/beneficiaries nor the Applicant's sister had given consent in the prescribed form, in favour of the Applicant to be substituted and the Applicant did not seek the other administrator's consent. That rather, she summoned them in court and it would be very difficult for the Administrators to discharge their duty under the law, if they were to work jointly with the proposed administrator, since she is difficult and unreasonable and is not able to agree even with her own sister. This was stated to be the very reason why her sister failed to give her consent.

11. I have considered the application before me and the reply thereto and find that there is nothing to be gained by appointing the Applicant as an administrator except to delay the distribution and it would be in the interest of justice that the distribution be concluded. The clear provisions of **Section 66 Law of Succession** are that when a deceased has died intestate, the Court shall, save as otherwise expressly provided, have the 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. The court shall however, without prejudice to the said 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 of the Law of Succession Act;

c. The public trustee; and

d. Creditors.”

12. By provisions of **Section 38 of the law of Succession Act** where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of **sections 41 and 42**, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children. The children of the intestate herein have priority over the Applicant and her siblings. I am

therefore of the view that the two administrators on record are sufficient for purposes of distributing the deceased's Estate and note that in the court's ruling dated 3rd October, 2014 the shares of each beneficiary were already identified.

13. In the premise I make orders as follows:

- i. The name of Lucy Njeri Kamau (deceased) be and is hereby deleted from the grant issued herein and from the certificate of confirmation of grant as Administrator.
- ii. The two surviving Administrators do move with speed to distribute the Estate of the deceased in accordance with the ruling of the court dated 3rd October 2014.
- iii. The share of Lucy Njeri Kamau be divided between her two daughters Salome Nyawira Kioi and Leah Wanjiru Waweru in equal shares.

There are no orders as to costs.

SIGNED DATED and DELIVERED in open court this **13th** day of **October 2015**.

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L. A. ACHODE

JUDGE