



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO.2367 OF 2007**

**IN THE MATTER OF THE ESTATE OF R M W (DECEASED)**

**C W W.....1<sup>ST</sup> APPLICANT**

**E W M.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**E W W.....RESPONDENT**

**RULING**

R M W, the deceased to whose estate these proceedings relate died on 26<sup>th</sup> December 1999. On 5<sup>th</sup> September 2007, E W W (the Respondent) petitioned the court to be issued with a grant of letters of administration intestate in respect of the estate of the deceased. She listed herself as the sole dependant of the deceased. She also stated the only asset of the estate of the deceased as being a parcel of land registered as LR. No. Dagoretti/Kinoo/ **[particulars withheld]**. The grant was issued to the Respondent on 8<sup>th</sup> February 2008. It was confirmed to her on 19<sup>th</sup> January 2009. She inherited the property that belonged to the deceased.

On 25<sup>th</sup> November 2013, E W M (the Applicant) moved this court by summons seeking to have the grant that was issued and confirmed to the Respondent revoked under **Section 76(b) and (c)** of the **Law of Succession Act** on the grounds that the Respondent had obtained the said grants by fraudulently making false statements and concealing from the court a material fact, which fact is that the Applicant is a dependant of the deceased by virtue of being his daughter. The Applicant stated that the Respondent failed to acknowledge her as a beneficiary of the estate of the deceased and in the process disinherited her from the property that belonged to the deceased. The application is supported by the annexed affidavit of the Applicant. In the affidavit, the Applicant stated that the deceased was married to two wives, namely M W W (the Respondent's mother) and J W K (the Applicant's mother). It was the Applicant's case that she was born on 20<sup>th</sup> May 1991. She annexed her birth certificate which indicated her parents as the deceased and J W. The birth certificate was obtained on 18<sup>th</sup> July 1991. This was contemporaneous with the period that the Applicant was born. She also annexed a copy of an application to join Standard 1 at **[particulars withheld]** Primary School which was made by the deceased. In the application, the deceased referred to the Applicant as his daughter. She also annexed several photographs in which she appears with the Respondent and the deceased. During the hearing of the case, the Applicant told the court that she was willing to be subjected to DNA test to determine her paternity. She therefore urged the court to recognize her as a dependant of the deceased.

The Respondent filed a replying affidavit in opposition to the application. She denied the assertion by the Applicant that she was the daughter of the deceased. She reiterated that she was the only child of the deceased. In that regard, she put the Applicant to strict proof thereof. She denied the claim by the Applicant that the deceased was married to her mother. She deponed that at the time it was alleged that the deceased was married to the Applicant's mother, the deceased lacked capacity to marry another woman by virtue of the fact that he had married the Respondent's mother under the **African Christian Marriage and Divorce Act** which prohibits polygamy. The Respondent was emphatic that at no time did the deceased nor her grandmother recognize the Applicant as the daughter of the deceased. During the hearing of the case, counsel for the Respondent also suggested that the Applicant be subjected to DNA test to establish her paternity.

Another application was filed by C W W. She also wishes to be recognized as the daughter of the deceased. She explained that she was a daughter of the deceased sired out of an incestuous relationship between the deceased and his cousin M W W. She was also willing to be subjected to a DNA test to determine her paternity.

This court has carefully evaluated the facts of this case. The issue in dispute is in regard to whether C W W and E W M are daughters of the deceased and therefore entitled to be considered as his dependants as provided under **Section 29(a)** of the **Law of Succession Act**. The Respondent has vehemently disputed that the two are daughters of the deceased. It is her case that she is the only daughter of the deceased. Both Applicants and the Respondent are willing to be subjected to DNA test to determine their paternity. This court is of the view that the suggestion made by both the Applicants and the Respondent will determine the issue of paternity with certainty. In the premises therefore, this court directs both Applicants and the Respondent to appear before the Government Chemist with a view to providing samples which will enable DNA test to be done to determine their paternity. This court is aware that the Government Chemist can determine the paternity of the three parties to this suit. The purpose of the DNA test will be to determine whether the two Applicants and the Respondent were sired by the same father. Each party will pay for the cost of the DNA test. The matter shall be mentioned before this court thirty (30) days after the delivery of this Ruling. It is so ordered.

**DATED AT NAIROBI THIS 2<sup>nd</sup> DAY OF OCTOBER, 2014**

**L. KIMARU**

**JUDGE**