



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of the Late Muhuthia Muchai (Deceased) (Succession Cause 393 of 1991) [2024] KEHC 3350 (KLR) (Family) (21 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3350 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**FAMILY**  
**SUCCESSION CAUSE 393 OF 1991**  
**HK CHEMITEI, J**  
**MARCH 21, 2024**  
**IN THE MATTER OF THE ESTATE OF THE LATE MUHUTHIA**  
**MUCHAI (DECEASED)**

**BETWEEN**

**MARGARET MUTHONI KIIRU ..... APPLICANT**

**AND**

**PETER MUHUTIA NYAMBURA & 2 OTHERS ..... RESPONDENT**

**RULING**

1. In her application dated 31<sup>st</sup> March 2022 the Applicant prayed that “the name Zaweria Wangui Muhuthia who died be removed as administrator in the estate of the deceased herein and be substituted with her name, Margaret Muthoni Kiiru.”
2. The application is based on her sworn affidavit dated the same date.
3. She deponed that the Zaweria Wangui Muhuthia who was the Administrator of the deceased estate passed away on 31<sup>st</sup> March 2021 as per the attached certificate of death.
4. The Applicant went ahead to enumerate the surviving beneficiaries left behind. She therefore prayed that she be allowed to come in place of her late mother.
5. Vide their affidavit of protest sworn on 7<sup>th</sup> June 2022, Peter Muhuthia Nyambura, Agnes Mukami Mwangi and Nancy Wanjiku Maina opposed the application stating among others that the Applicant cannot be trusted as an administrator based on her past conduct in respect to the estate of their deceased mother in law and the former administrator herein.



6. They argued that they were the deceased daughter in laws as well as grandchildren and they have rights over the said estate.
7. The Applicant has filed an affidavit in reply sworn on 8<sup>th</sup> March 2023 deposing that the respondents ought to have applied for letters of administration in the estate of their late husbands or mothers before seeking to benefit from this estate.
8. The court has perused the submissions made by the parties and does not intend to reproduce them here. Suffice to state that the estate cannot remain without an administrator. For some reason known to the family members the grant issued on 26<sup>th</sup> September 1991 was never confirmed.
9. It is evident from the rival affidavits that there is more than what the parties have submitted. However, it is necessary that the battle be taken to the distribution stage.
10. Whether for instance the Respondents have legal standi in the estate is not a matter to be decided now as the submissions seem to suggest. At the appropriate time the parties shall move the court.
11. In view of the provisions of Section 29 of the *Succession Act* it is clear that in terms of consanguinity the deceased children are next in line after the passing of either of the parents. This being the case the Applicant is a child to the deceased herein. The Respondents are daughter in laws and or grandchildren.
12. Gleaning from the objector's submissions it appears that there are other surviving children of the deceased including Mary Wambui Muhuthia, Rosemary Kagira Muhuthia and Lucy Wairimu Muhuthia.
13. In the premises and so as to dispel any mistrust by the Respondents it is necessary and imperative to grant the four surviving children of the deceased the right to administer their late father's estate and to come in place of their deceased mother who was the administrator.
14. All is not lost to the Respondents who shall have the opportunity to agitate for their rights once the administrators apply to have the estate confirmed.
15. The court is fully conscious that the three have not applied to be administrators and thus they will have the liberty to decline this appointment if need be. The estate however must move on.
16. Consequently, the application is allowed as hereunder:-
  - (a) Margaret Muthoni Kiiru, Mary Wambui Muhuthia, Rosemary Kagira Muhuthia and Lucy Wairimu Muhuthia are hereby made joint administrators of the deceased estate herein in place of the late Zaweria Wangui Muhuthia.
  - (b) The new administrators are hereby granted 60 days from the date herein to apply for the confirmation of the grant issued on 26<sup>th</sup> September 1991.
  - (c) Costs shall be in the cause.

**DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 21<sup>ST</sup> DAY OF MARCH 2024.**

**H K CHEMITEI**

**JUDGE**

