



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**IN THE MATTER OF THE ESTATE OF PETER NDOHO KIMANI (DECEASED)**

**SUCCESSION CAUSE NO. 301 OF 2018**

**BETH WAMBUI KIMANI.....1<sup>ST</sup> APPLICANT**

**PATRICK IRUNGU NDOHO.....2<sup>ND</sup> APPLICANT**

**JULIUS KIMANI NDOHO.....3<sup>RD</sup> APPLICANT**

**CHARITY WAIRIMU NDOHO.....4<sup>TH</sup> APPLICANT**

**EVANS MUCHUGU NDOHO.....5<sup>TH</sup> APPLICANT**

**JUDY WANGECHI NDOHO.....6<sup>TH</sup> APPLICANT**

**JOSPHAT MWANGI NDOHO.....7<sup>TH</sup> APPLICANT**

**VERSUS**

**ANJELINAH WAIYIGO MWANGI.....RESPONDENT**

**RULING**

1. The deceased Peter Ndoho Kimani died intestate on 26<sup>th</sup> November 2017. There is no dispute that he left the following children:-

- a) Beth Wambui Kimani (1<sup>st</sup> applicant);
- b) Patrick Irungu Ndoho (2<sup>nd</sup> applicant);
- c) Julius Kimani Ndoho (3<sup>rd</sup> applicant);
- d) Charity Wairimu Ndoho (4<sup>th</sup> applicant);
- e) Evans Muchugu Ndoho (5<sup>th</sup> applicant);
- f) Judy Wangechi Ndoho (6<sup>th</sup> applicant); and
- g) Josphat Mwangi Ndoho (7<sup>th</sup> applicant);

2. On 9<sup>th</sup> March 2018 the respondent Anjelinah Waiyigo Mwangi filed a citation addressed to the applicants, seeking them to accept or refuse letters of administration intestate. She was saying that she was the deceased's widow. On the basis that the applicants had been served with the citation and had not responded, the respondent was on 14<sup>th</sup> November 2018 allowed to petition for the grant of letters of

administration intestate.

3. On 17<sup>th</sup> December 2018 the respondent petitioned for the grant of letters of administration intestate. The petition was gazetted in Gazette Notice No. 649 of 25<sup>th</sup> January 2019. On 28<sup>th</sup> February 2019 the grant was issued to her.

4. On 26<sup>th</sup> July 2019 the applicants filed this summons dated 25<sup>th</sup> July 2019 seeking the revocation of the grant. The grounds were that the grant had been obtained by means of untrue allegation of facts essential in point of law to justify the grant, and that the proceedings leading to the grant were defective in substance. In the supporting affidavits, the applicants denied that the respondent had been married to their late father. They claimed that the respondent was a stranger to the estate who was not entitled to administer the estate. They stated that the respondent was only the deceased's househelp, and that it was in that capacity that the two lived together, and they lived together for a short while only. Further, they stated that they were never served with the citation and therefore were not afforded an opportunity to object to both the citation and the petition. Lastly, they claimed that the petition had not been gazetted as required by the law.

5. The respondent's response was that she was the deceased's wife; that the two had lived together as husband and wife between 1991 and 2016. She denied that she was the deceased's househelp. She deposed that the petition had been gazetted, and therefore the grant had been property issued.

6. The replying affidavit was silent on the averment of the applicants that they were not served with the citation. It is only in the written submissions by the respondent's counsel that it was indicated that the 3<sup>rd</sup> applicant had entered appearance (which meant he had been served) but that he had not filed any response to the citation. Indeed, the record shows that, following the citation the 3<sup>rd</sup> respondent had entered appearance on 2<sup>nd</sup> May 2018 through Amuga & Co. Advocates. He had not filed a response. There is, however, no indication that the rest of the applicants were served. Each of them was entitled to personal service, now that they were not represented. It cannot be taken that service to the 3<sup>rd</sup> respondent was service to them. He was never their agent for the purpose of service of process.

7. There is no indication that the petition was consented to by the applicants, or that they were made aware that it was going to be filed by the respondent.

8. The applicants did not renounce their entitlement to petition for the grant, and no notice was issued to them before the grant was issued. Under **rule 26(1) and (2) of the Probate and Administration Rules**, I find that the proceedings leading to grant were defective in substance.

9. The issue whether or not the deceased and the respondent were husband and wife will be heard and determined at the point of determining who will be entitled to the grant of letters of administration intestate.

10. Consequently, I revoke the grant that was issued to the respondent on 21<sup>st</sup> march 2019. Further, the respondent will within 60 days from today account to the court on the status of the estate of the deceased, and where the proceeds from the property of the estate of the deceased have been secured and how they have been applied.

11. The applicants have 14 days to formally file objections to the petition and to cross-petition for the grant, as the case may be.

12. Costs of the application shall be paid by the respondent.

**DATED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 8<sup>TH</sup> APRIL 2021.**

**A.O. MUCHELULE**

**JUDGE**