

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 938 OF 2005

ESTHER NJERI NJENGA

ROSE WANJIKU NJENGA

(Legal representative of the estate of WALTER NJENGA).....APPELLANTS/APPLICANTS

VERSUS

STEPHEN NGANGA NJENGA.....RESPONDENT

RULING

1. Before me is a notice of motion dated 18th June 2020 seeking an order to allow the appellants/applicants to adduce additional evidence. Its brought under section 1A, 1B, 3A, 78(1)(d) of the Criminal Procedure Act and Order 42 Rule 7 and Order 51 Rule 1 of the Criminal Procedure Rules. It is supported by the grounds on its face plus the supporting affidavit of Esther Njeri Njenga.
2. The application is opposed by the respondent who filed a replying affidavit sworn on 8th September 2020.
3. The document that the appellants/applicants seek to have admitted as evidence is a Will sworn by one Walter Njenga (now deceased) who was the initial appellant. There are other documents accompanying the Will.
4. I have studied the entire file and I find that the issue of this Will dated 15th July 1999 is a serious one and **MUST** be first sorted out. This court is not the right place for that. The matter is already before the Family Division vide Nairobi High Court Succession Cause No. 2939 of 2014. The appellants and the respondent are all children of the deceased Walter Njenga Kagerine and so are beneficiaries of his estate.
5. I am therefore giving the parties herein 90 days for them to move the court in the said Succession cause for a determination on that WILL. There is no short cut to this issue. Mention on 28th September 2021 to confirm the position before this court can decide on the application dated 18th June 2020.

DELIVERED ONLINE, SIGNED AND DATED THIS 31ST DAY OF MAY 2021 IN OPEN COURT AT NAIROBI.

H. I. ONG'UDI

JUDGE