



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

SUCCESSION CAUSE NO. E010 OF 2020

IN THE MATTER OF THE ESTATE OF GEORGE MBURU *alias* GEORGE MBURU NJIRIRI (DECEASED)

IRENE WANJIRU KIROGO.....APPLICANT

VS.

MOSES NJIRI MBURU.....1ST RESPONDENT

SARAH WACHEKE MBURU.....2ND RESPONDENT

RULING

1. **IRENE WANJIRU KIROGO (Irene)** has moved this Court by Notice of Motion application dated 13th December, 2020. The application is brought in respect to the *Estate of GEORGE MBURU alias GEORGE MBURU NJIRIRI* deceased. Irene by her application seeks three prayers as follows:-

1. *That the deceased last WILL exhibit and marked GMN 01 be adopted by the Honourable court.*
2. *That the two succession causes Limuru Senior Principal Magistrate Succession Cause No. 20 of 2019 and Kiambu Chief Magistrate Succession Cause No. 476 of 2018 be consolidated and concluded in the High Court.*
3. *That costs be in the cause.*

2. The application is opposed by **MOSES NJIRIR MBURU** and **SARAH WACHEKE MBURU**, collectively referred to as respondents.

ANALYSIS

3. I have considered the affidavits filed by **IRENE** and the respondents and I have also considered the written submissions. What those reveal is that there are two succession matters filed in respect to the deceased's Estate. The respondents filed before the Kiambu Chief Magistrate's Court Succession Cause No. 476 of 2018 and Irene filed before the Limuru Senior Principal Magistrate's Court Succession Cause No. 20 of 2019. It is clear that Grants have been issued in both those succession causes. The respondents have filed an application for Confirmation of the Grant which I note has not been adjudicated upon.

4. Irene filed before this Court a Miscellaneous Application No. 414 of 2019. Under that application, this Court on 11th December, 2019 granted an *ex parte* order that there be *status quo* maintained in respect to the deceased's Estate. It is not clear from the exhibits produced in this matter whether that application was heard *inter partes*.

5. I have taken into account the opposition raised by the respondents to the prayers sought by Irene in her application under consideration. The application is considered on the basis of affidavit evidence and written submissions. It does then become obvious that Irene's prayer for the adoption of what Irene refers to as the deceased's Will cannot be entertained without this Court receiving *viva voce* evidence. Accordingly, prayer number 1 of the application will not be granted.

6. It is a concern of this Court that two different Magistrate's Courts are seized with two successions relating to one Estate. That, in my view, is an undesirable legal position. There is therefore need for the two succession matters to be considered before one court for one decision to be made over the Estate of the deceased. It is for the above reason that I will order the two succession matters to be transferred to this Court.

DISPOSITION

7. In respect to the Notice of motion dated 13th November, 2020, I make the following orders:-

(a) Prayer No. 1 of the Notice of Motion dated 13th November, 2020 is declined, for now, it shall be considered in the substantive succession causes as the court directs.

(b) The Kiambu Chief Magistrate's Court Succession Cause No. 476 of 2018 is hereby transferred to this Court.

(c) The Senior Principal Magistrate's Court Succession Cause No. 20 of 2019 is hereby transferred to this Court.

(d) The Kiambu C.M. Succession Cause No. 476 of 2018 and Limuru SPM Succession Cause No. 20 of 2019 shall be mentioned before this Court on a date to be fixed at the reading of this Ruling.

(e) This Miscellaneous Application No. E010 of 2020 and Kiambu High Court Misc. Application No. 414 of 2019 shall be mentioned on the same date as shall be fixed as stated in paragraph (d) above.

(f) The costs of this Notice of Motion dated 13th November, 2020 shall be considered when the substantive Succession Causes will be determined and if not each party shall bear their own costs thereof.

RULING DATED AND DELIVERED AT KIAMBU THIS 23RD DAY OF SEPTEMBER, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Ndege

For the Irene Wanjiru Kirogo :- N/A

For the Respondents (*Moses Njiriri Mburu &*

Sarah Wacheke Mburu) :- N/A

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE