

REPUBLIC OF KENYA

IN THE HIGH COURT KENYA

AT MERU

SUCCESSION CAUSE NO 181 OF 2015

IN THE MATTER OF THE ESTATE OF ZAKAYO M'RITARI M'RWITO.....DECEASED

ALICE MUKOMWENE.....PETITIONER

VERSUS

MOSES NTARANGWI.....PROTESTER/APPLICANT

RULING

1. On 22nd of November 2019 when the matter herein came up for mention to confirm filing of submissions in respect to application for confirmation and protest dated 2nd February 2017 and 28th March 2017 respectively, the Protester had filed an application dated 20th November 2019 seeking to have his case reopened on the grounds that his former Advocate Mr Ayub Anampiu had applied to cease acting when the matter was slated for hearing and that the court granted the prayer and ordered the matter to proceed in default of representation of an Advocate. It was argued that the Protester was not properly represented and will be greatly prejudiced when the pleadings are not reopened and his Advocate allowed to examine the witnesses. It was the Protester's ground that unless the hearing is reopened his constitutional right to representation and fair hearing will be at risk of being violated. The application was supported by the affidavit sworn by Mr Munene Nkanata Advocate on 20th November 2019. The application was opposed by the replying affidavit of the Petitioner sworn on 11th January 2020.

2. Having considered the application dated 20th November 2019 seeking to have the case herein reopened and the grounds upon which the applications are based as well as the replying affidavit and submissions filed by the Petitioner's Advocate it is obvious that the averments in the supporting affidavit are misleading. The Protester asked his Advocate to stop representing him. When the Advocate conveyed the information to the court the Protester was asked whether this was true and he said that he wanted the Advocate to withdraw from acting for him. The matter then proceeded to hearing and the Petitioner and her two witnesses testified and were cross examined by the Protester who did not inform the court that he wanted to instruct another Advocate. Since the Protester had been stood down on 18th July 2018 this court had him recalled for cross examination on 15th October 2019 and even then he did not tell the court that he wanted to instruct an Advocate. In any case after he fired his Advocate on record on 25th July, he had all the time to instruct another Advocate to represent him even on 15th October 2019 when he came for cross examination but he did not do so. On 15th of October when he was cross examined and was due to have his witness testify, the said witness disappeared from the court and the Protester was given time to come with the witness on 16th October 2019 but on 16th October the Protester again did not have his witness in court by 11.30 a.m. When the file was placed aside to enable him call his witness he did not turn up neither did the witness turn up.

3. The upshot of the above is that the Protester/Applicant had all the time to inform the court that he wanted to instruct another Advocate but he did not do so and the court could not have assumed that having fired one Advocate he needed time to instruct another. He has inordinately delayed in asking the court to give him an opportunity to instruct another Advocate to prosecute the protest that was filed 2nd February 2017. I find this application not merited and the same is dismissed with costs. The ruling on the distribution of the estate shall be delivered within 2 weeks upon parties filing their respective submissions by email to the Deputy Registrar.

HON.ANNE ADWERA ONGINJO

JUDGE

DATED AND DELIVERED AT NAIROBI VIA EMAIL THIS 27TH DAY OF APRIL 2020 DUE TO THE PRESIDENTIAL DIRECTIVES ISSUED ON 15TH MARCH 2020 AND SUBSEQUENTLY ON 7TH APRIL 2020 DUE TO COVID-19 PANDEMIC.

HON.ANNE ADWERA ONGINJO

JUDGE