



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

AD LITEM NUMBER 172 OF 2016

IN THE MATTER OF THE ESTATE OF FRANCIS NJOGU NJUGUNA (DECEASED)

CECILY GATURI GICHOVI.....PETITIONER

VERSUS

ANN WAIRIMU.....RESPONDENT/APPLICANT

RULING

1. This ruling is in respect of the application dated 22/6/2018. The prayers sought are;

- 1. THAT this court be pleased to certify the application as urgent and the same be heard ex-parte in the first instance.**
- 2. THAT this honourable court be pleased to review its finding and orders dated 5/12/2016.**
- 3. THAT this honourable court be pleased to set aside its orders on such terms as are just.**
- 4. THAT this honourable court be pleased to uphold succession cause number 555 of 2016 filed at the Chief Magistrate's Court at Kiambu by the applicant.**
- 5. THAT in the alternative, this court be pleased to grant such other or further orders as it shall deem fit and just for the preservation of justice regarding the nature and circumstances of the case.**
- 6. THAT the costs of this application be provided for.**

2. The application is premised on grounds that;

- a) THAT the applicant is the widow to the deceased herein and the administrator to the estate of Francis Njogu Njoroge (deceased) who died on 4/5/2009.
- b) THAT the respondent herein in compliance with court orders petitioned for letters of administration filed at the Chief Magistrate's Court at Kiambu vide Succession Cause Number 555 of 2016 which was filed on 16/11/2016.
- c) THAT the grants of letters of administration were issued to the respondent on the 27/3/2017 and the same have been confirmed.

d) THAT after filing the same, the petitioner was informed through registered post.

e) THAT the court issued orders on the 5/12/2016 against the respondent for not complying with court orders to take out letters of administration.

f) THAT therefore the finding of this court that the respondent did not comply with orders to take out letters of administration is an error apparent on the face of the record and in respect of which this court ought to act *suo moto* to review in the interest of justice and fairness.

g) THAT taking into consideration that the court orders were issued much later after the applicant had filed the petition, it is sufficient reason to warrant review of this court's orders.

h) THAT this honourable court has inherent powers to grant the order sought to preserve the ends of justice.

3. It is further supported by the affidavit of Anne Wairimu Kiarie.

4. Despite evidence of proper service, the application was unopposed.

5. The gist of the application is that the orders of court issued on 5/12/2016 against the applicant were in error since the applicant had complied with orders of court earlier issued and petitioned for letters of administration at the Chief Magistrate's Court Kiambu vide Succession Cause Number 555 of 2016. A copy of petition is annexed.

6. A grant of letters of administration were issued to the applicant on 27/3/2017 and the same have been confirmed.

7. For determination is whether the court should review and/or set aside its orders of 5/12/2016.

8. The applicant has demonstrated through affidavit evidence that he complied with the orders of court of 17/10/2016 requiring her to take out letters of administration. This was done through **Succession Cause Number 555 of 2016** at the **Chief Magistrate's Court Kiambu** which was lodged in court on 16/11/2016.

9. To that extent therefore the orders of court of 5/12/2016 were in error and are not sustainable.

10. I am satisfied that the said orders should be set aside as there is an error apparent on the face of the record.

11. I allow the notice of motion dated 22/6/2018 and make the following orders;

1. The orders of court of 5/12/2016 be and are hereby set aside.

2. All issues arising in respect of the estate of Francis Njogu Njoroge be litigated in Succession Cause Number 555 of 2016 at the Chief Magistrate's Court Kiambu.

3. Each party to bear its own costs.

Dated and Delivered at Nakuru this 29th day of January, 2019.

A. K. NDUNG'U
JUDGE