

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 445 OF 2015

IN THE MATTER OF THE ESTATE OF GEOFFREY KAMONDE MUCHICHU (DECEASED)

ROSEMARY WANGUI KAMONDE.....APPLICANT

VERSUS

JUDY WAMBUI KABUCHO.....RESPONDENT

RULING

1. The deceased Geoffrey Kamonde Muchichu was an advocate of the High Court of Kenya who practiced as G. Kamonde Advocates. He died intestate on 16th November 2014. He was survived by two widows, Rosemary Wangui Kamonde (applicant) and Judy Wambui Kabucho (respondent). There is no dispute that on 14th January 2015 the two widows consented to having Mary Wanjuhi Muigai of Muigai, Kemei & Associates take over the operations of G. Kamonde Advocates for the purpose of winding up the firm. Based on the consent, the Law Society of Kenya appointed Mary Wanjohi Muigai to wind up the firm.

2. On 13th January 2016 the applicant, the respondent and the deceased's son James Mburu Kamonde were jointly appointed as administrators of the estate of the deceased. This followed a petition that was filed on 1st December 2015 by the three. The petition followed a citation filed by the applicant and James Mburu Kamonde on 25th February 2015. They cited the respondent to accept or refuse letters of administration. The respondent came into the matter, being represented by Muigai, Kemei & Associates. Mary Wanjuhi Muigai of the firm has since represented her in these proceedings. The grant is pending confirmation.

3. The applicant filed a complaint to the Disciplinary Tribunal of the Law Society of Kenya claiming that Mary Wanjuhi Muigai was conflicted because she was the one winding up the firm and was at the same time acting for the respondent in these proceedings. The Tribunal reached a verdict on 12th February 2018 and found that indeed counsel was conflicted because the succession cause was related to the winding up process in which she acted for the two widows, and now was acting for one of them (the respondent); that she had placed herself in a situation of conflict by acting for the respondent in this cause when she had acted for both in the winding up. A finding of guilt was returned. She was strongly admonished. She did not appeal the decision.

4. On the 24th April 2018 the applicant brought this application seeking that orders be given stopping the firm of Muigai, Kemei & Associates, and specifically Mary Wanjuhi Muigai, from acting for the respondent owing to the above conflict.

5. Mary Wanjohi Muigai filed an affidavit dated 15th May 2018 to state that since the decision of the Tribunal she had taken steps to purge the conflict by opting to represent the respondent in these proceedings and had left another counsel by name Millicent Aseko of their firm to complete the winding up; that the respondent was a housewife and student who was completely depended on her for legal representation. James Mburu Kamonde supported the request that Muigai, Kemei & Associates, and Mary Wanjuhi Muigai, do cease acting for the respondent.

6. The advocate instructed by the Law Society of Kenya to wind up the firm of G. Kamonde Advocates was Mary Wanjuhi Muigai of Muigai, Kemei & Associates. Counsel cannot legally hand over the responsibility to another member of her firm without reference to the Society. In any case, no member of the firm can act for the respondent in these proceedings because of the danger of conflict. Given the Tribunal finding, prayers (A) and (B) of the application are allowed. Neither the firm of Muigai, Kemei & Associates nor Mary Wanjuhi Muigai can act for the respondent in the succession proceedings.

7. The application had two other prayers in (C) and (D), that the respondent do relocate to a different residential house from the matrimonial home that belonged to the applicant and the deceased. Now that the applicant is without counsel, the determination of that limb of the application has to await her to either get another counsel or opt to act in person. She has to be heard on the same after exercising her option.

8. In conclusion, I allow prayers (A) and (B) of the application dated 24th April 2018 and filed on 24th April 2018. In the particular circumstances of this case, I ask that costs be paid by Mary Wanjuhi Muigai.

DATED and DELIVERED on the 26TH day of SEPTEMBER 2018

A.O. MUCHELULE

JUDGE