



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO. 144 OF 2011

IN THE MATTER OF THE ESTATE OF THE LATE PHYLLIS WAITHERA (DECEASED)

PATRICK GACHUKI MBUGUA ----- PETITIONER

RULING

1. By way of a Chamber Summons dated 16/10/2015 Patrick Gachuki Mbugua (hereinafter applicant) moved that Court for orders;

1. **THAT** this honourable court do make an order compelling the Registrar of Births and Deaths Nakuru to process a death certificate for Phylis Waithera (Deceased) to enable the Applicant PATRICK GICHUKI finalise the succession cause herein.

2. **THAT** the costs of this application be provided for.

2. The Application is premised on the affidavit of the applicant and on grounds;

1) That the above mentioned PHYLLIS WAITHERA (deceased) died on 11th November 2010 at NAKURU whilst domiciled in Nakuru.

2) That prior to her demise, PHYLLIS WAITHERA (deceased) was the respondent in Nakuru High Court Civil Appeal No.10 of 2010 whereas the applicant is the Appellant, which appeal is still pending in court.

3) That the Applicant, thereafter cited one Samuel Ndungu Mungai, the son of the deceased, to take up letters of administration in respect of the deceased estate for purposes of substitution in the appeal which letters the said SAMUEL NDUNGU failed to take up.

4) That as a consequence, the court ordered the Applicant to petition for the letters of administration in respect of the estate of the deceased.

5) That the said Petition cannot be lodged without a death certificate.

6) That efforts to have the Registrar of Births and Deaths to process the said title have proved futile.

7) That it is therefore in the interest of justice that the order sought herein be granted.

3. The substance of the application is that before her demise, Phylis Waithera (deceased) was a party in

the High Court Civil Appeal No.10 of 2010 as the respondent whereas the applicant herein was the appellant.

4. Despite the applicant citing one Samwel Ndungu Mungai, a son of the deceased to take out or refuse letters of administration, the said Samuel did not act.

5. The record shows that on 3/10/2013 the court directed that the applicant (then citor) was at liberty to apply for letters of administration in respect of the estate of the deceased in default of the citee (Samuel Ndungu) taking out letters in 30 days.

6. To petition for letters of administration, one of necessary documents is a death certificate, which in the circumstances of this case the applicant would not be expected to have in his possession.

7. There is evidence the applicant has sought to obtain a death certificate in respect of the late Phylis Waithera Mungai from the Registrar of Births and Deaths Nakuru which application has elicited no response therefrom.

8. From the foregoing, it is quite clear that the interests of the applicant in High Court Civil Appeal No. 10 of 2010 remain highly prejudiced for lack of a legal representative to the estate of the respondent therein; Phylis Waithera Mungai.

9. It is in the larger interests of justice that the registrar of births and deaths Nakuru be compelled to issue the applicant with a death certificate in respect of Phylis Waithera Mungai (deceased).

10. With the result that the summons dated 16/10/2015 is allowed in terms of prayer 1. Costs shall be in the cause.

Dated, Signed and Delivered Nakuru this 28th day of March, 2017.

A. K. NDUNG'U

JUDGE