

IN THE HIGH COURT OF KENYA AT BUSIA

PROBATE & ADMINISTRATION NO. 237 OF 2014

IN THE ESTATE OF PHILIP WERE SIOKA.....DECEASED

AND

BONVENTURE ANTHONY MULWENGEPETITIONER

AND

HENDRICA ANYANGO WERE.....OBJECTOR

VERSUS

JULIUS BWIRE WERE..... INTERESTED PARTY/ APPLICANT

RULING

JULIUS BWIRE WERE, the interested party/ applicant herein, moved the court by way of Notice of Motion dated 18th October 2016. It was premised under sections 1A,1B, 3A and 63(e) of the Civil Procedure Act and Orders 40 and 50 Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law. He is seeking the following orders:

1. That the honorable court be pleased to set aside orders issued on 20th September 2016.
2. That the cost of this application be provided for.

The petitioner /respondent on 14th February 2017 gave a notice of preliminary objection on ground that the application by the interested party was incompetent for it was filed in a manner contrary to the applicable law. My attention was brought the decision in **PRISCILLA VUGUTSA KAMALIKI V MARY RUNYANYI OCHIENG [2016] eKLR** where Judge Nekoye Sitati observed as follows:

The first issue for this Court to determine is whether the instant application is properly before the Court. The application is expressed to be brought under Section 1A, 1B, 3, 3A and 63 (e) of the Civil Procedure Act Order 40 Rule 4 and Order 51 Rule 1 of the Civil Procedure Rules. It is worth noting that the Law of Succession Act is a self-contained Act and provisions of the Civil Procedure Act, unless specifically imported into it are not applicable. A look at Rule 63 of the

Law of Succession Act reveals that the provisions under which the present application is brought are not some of the provisions imported into the Law of Succession Act. What this means therefore is that the instant application is incompetent for want of form and is therefore fit for striking out.

In the instant application, similar situation obtain. I wholly agree with the learned judge. I therefore sustain the objection. The effect of this is to strike out the application dated 18th October 2016 together with the orders that were issued ex parte in pursuit of the application.

The interested party/applicant may be at liberty to file a competent application if he so wishes.

Costs be in the cause.

DELIVERED and SIGNED at BUSIA this 20th day of June, 2017

KIARIE WAWERU KIARIE

JUDGE