

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 363 OF 2011

**IN THE MATTER OF THE ESTATE OF THE LATE HUDSON KAGOTHO MACHARIA-
DECEASED**

Emily Wangui Kagotho.....Petitioner

Versus

Esther Wambui Kagotho.....Objector

RULING

By way of a summons general dated 28th May 2014 expressed under the provisions of Rules **49** and **73** of the Probate and Administration Rules, the petitioner (hereinafter referred to as the applicant) seeks orders that the Respondent executes all the requisite documents to facilitate the conclusion of this cause, being forms **RL7, RL19**, partition forms, mutation forms and all other land control board documents and to surrender her pass port, pin and original title deed in default the court authorizes the executive officer of this court to execute the said documents and order the Land Registrar, Nyeri to dispense with the production of the original title and such other necessary documents.

On 22.2.2016 when the matter came up before me, **Mr. Kamwenji** advocate appeared for the applicant while **Ndata Mugo** advocate appeared for the objector and both parties agreed by consent to have the application dispensed by way of written submissions. I directed both parties to file their written submissions within two weeks from the said date and a mention date was fixed for 24th May 2016. On the said date, only counsel for the applicant had filed his submissions and neither did counsel for the objector or the objector attend court.

I have looked at the application before me and the replying affidavit filed by the objector on 20th May 2015. I note that the objector has raised pertinent issues touching on the grant and generally the manner in which these proceedings have proceeded. Specifically, the objector states that she only learnt the petitioner took a date for her objection without informing her and applied for the grant to be issued to herself and the petitioner jointly. Indeed, the record shows that on 10.5.2013, she did not attend court when the orders were made appointing her and the petitioner as joint administrators. Further, she states that she was not served with the application for confirmation of the grant and avers that the applicant has not been honest and diligent in administering the estate, and that she could have filed an affidavit of protest opposing the proposed mode of distribution. She also disputes the existence of a will and stated that she was in the process of applying to set aside the orders hither made and seek to have the objection heard. She argues that her objection raises weighty issues.

In my view, with the above information on record, it will be imprudent for this court to allow the orders sought as such orders will only serve to make the simmering dispute much murkier. A court of law is enjoined to adjudicate and resolve disputes and should not be seen to issue orders which will have a direct bearing in aggravating the dispute between the parties.

I accordingly, I find no reasonable basis for me to allow the application before me. I hereby dismiss it with costs to the objector.

Right of appeal **30** days

Dated at Nyeri this 9th day of June 2016

John M. Mativo

Judge