

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1511 OF 2003

IN THE MATTER OF THE ESTATE OF STEPHEN CHEGE KIMARI (DECEASED)

RULING

1. The application dated 1st April 2015, is by a beneficiary of the estate of the deceased, James Mwangi. The principal prayer is for the removal of one of the two administrators of the estate, Martha Mugure Chege, and for her replacement with the applicant.
2. The reason given for her proposed removal is that she has become an impediment to the distribution of the estate. She is demanding large sums of money so that she can complete administration, and she is only processing assets that were allocated to her at the confirmation of the grant. .
3. There is no evidence that the said application was ever served on the persons who are named on its face as the respondents, that is to say the two administrators of the estate. The only affidavit of service on record with respect to the application was sworn on 23rd October 2015 and relates to a notice for a hearing scheduled for 28th October 2015. It was on the basis of the service of that notice that I allowed the applicant to argue his application on the due date.
4. As the application was never served on the respondents, there cannot be any basis for me to grant the orders sought. The respondents were not confronted with the allegations against them, and they did not get a chance to respond to the allegations.
5. The application seeks removal of an administrator. The process of removal is akin to that of appointment. The consents of all concerned must be obtained, particularly if they rank equal or higher to the applicant in terms of entitlement to appointment. From the certificate of confirmation of grant, I have counted ten (10) survivors. None of them has filed any papers in support of the application.
6. I need not say more. The application before me, dated 1st April 2015 is misconceived. I should dismiss it. I hereby do so. There shall be no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 23RD DAY OF SEPTEMBER, 2016.

W. MUSYOKA

JUDGE