REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1948 OF 2015

IN THE MATTER OF THE ESTATE OF MWANGI WABABU alias WANJAU GACAGO(DECEASED)

RULING

1. The application for determination is a summons founded on Rule 73 of the Probate and Administration Rules and dated 8th January 2016.

2. The said application, the applicant, who claims to be a daughter in law of the deceased, seeks three principal orders:-

(a) That the persons she has named as respondents be ordered to surrender all title documents relating to the estate of the deceased to her;

(b) That the respondents do surrender to her the income they have collected from the estate for the period running from February 2015 to January 2016; and

(c) That the respondents do disclose information to her respecting the assets listed in her application.

3. The persons named as respondents are widow, son, daughter and daughters in law of the deceased, who is said to have died in 1967 and in respect of whose estate representation had not been sought. The applicant has filed a petition for representation to the deceased's estate.

4. The reply to the application is by the first respondent, who is the widow of the deceased. She avers that she does not know the applicant, but supposes that she is the former wife of her dead son. She states that the two separated or divorced and the applicant went on to live with another man, only emerging after her son died to claim a stake in the estate of the deceased, the father of her former husband.

5. The applicant petitioner is yet to be granted representation to the estate of the deceased. The property of the estate therefore has not vested in her as administrator in keeping with section 79 of the Law of Succession Act, Cap 160, Laws of Kenya. Accordingly, she does not have the legal standing to seek the orders that she has sought in the application. There is clearly not basis for grant of the orders sought. She is an intermeddler in the estate according to section 45 of the Act. The mere fact that she has sought representation to the estate does not vest her with authority over estate assets and documents of title.

6. I have noted from the papers filed herein that the applicant petitioner is an alleged daughter in law of the deceased. Among the persons who survived the deceased, and who are still alive, are his widow, a son and a daughter. According to section 66 of the Act, these three have a superior right to administration of the estate over the applicant petitioner.

7. Going by the provisions of section 66 and Part V of the Act, a daughter in law has no right to inherit the estate of her dead parent in law. It is her children who have a right to inherit by virtue of being grandchildren of the deceased. Similarly, daughters in law have no entitlement to administer the estate of their dead parent in law. That right accrues to their children who are the blood relatives of their deceased grandparent.

8. A person who has no right to administer an estate or who has a lesser right to administration is required

to furnish the court with material showing that those with a prior right have either renounced that right, or consented in writing to the person without right or with a lesser right being granted representation, or have caused citations to be issued for service upon such persons. This is provided for in Rule 7(7) of the Probate and Administration Rules. This is what the applicant petitioner ought to have done instead of filing the present application.

9. As I have indicated that the applicant petitioner does not have the requisite standing to seek the orders that she seeks in the present application, I can only conclude that the application before me is premature, incompetent, misconceived and an abuse of court process. It is hereby struck out. The first respondent shall have the costs of the application.

DATED, SIGNED and DELIVERED at NAIROBI this 18TH DAY OF NOVEMBER, 2016.

W. MUSYOKA

JUDGE