

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 277 OF 2015

IN THE MATTER OF THE ESTATE OF HANNAH NJERI GICHUHI (DECEASED)

RULING

1. The application for determination is the summons dated 12th February 2015. It is brought at the instance of Agnes Wanja Gichuhi, who claims to be the executor of the will of the deceased made on 9th July 2009. She seeks orders to restrain George Gichuhi Kimemia from intermeddling with a property known as Dagoretti/Riruta/5159. Her affidavit was sworn on 12th February 2015. She alleges that the said property was given to her in the will of the deceased.

2. The person named in the application as respondent, George Gichuhi Kimemia, swore an affidavit on 27th March 2015, which was filed herein on the same date. He too claims that Dagoretti/Riruta/5159 was given to him by a will the deceased made on 5th February 2015.

3. The applicant herein, together with Joseph Ndung'u Gichuhi, petitioned this court in this cause on 10th February 2015, by a petition lodged in the cause on the said date. The petition is supported by an affidavit sworn by the two petitioners on 29th January 2015. They seek a grant of letters of administration intestate, on the averments that the deceased had died intestate. The cause herein was commenced or originated by the said petition.

4. Clearly, the averments made in the application dated 12th February 2015 are not aligned with those in the petition. The petition should be the foundation or basis of the said application. If the main pleading is that the deceased died intestate, then there cannot be any basis for the averment in the interlocutory application that the deceased had died testate. The petition and the interlocutory application are not in sync.

5. I do not see any basis upon which I can grant the orders sought. The application dated 12th February 2015 is misconceived and an abuse of the court process. It is hereby struck out, with costs the respondent. The temporary orders made herein on 12th February 2015 are hereby discharged.

6. The Deputy Registrar is hereby directed to cause the petition herein to be gazetted upon payment of the requisite fees.

7. It is so ordered.

DATED and SIGNED at NAIROBI this 16TH DAY OF DECEMBER, 2016.

W. MUSYOKA

JUDGE

DELIVERED and SIGNED this 20TH DAY OF DECEMBER, 2016.

R. OUGO

JUDGE