



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
CIVIL APPEAL CASE NO. 58 OF 2002

JAMES NJUE NYAGA KAMANGA.....APPLICANT

VERSUS

NYAGA KAMANGA

ADMINSTRATOR WAMBUI NYAGA

NGARI KAMANGA.....RESPONDENTS

(An appeal from the judgment of the Embu SPMCC No. 57 of 1982 delivered on 18/5/2001)

R U L I N G

In the application dated 30th October 2013 the applicant James Kamanga Nyaga seeks for the following orders:-

1. *This Honourable Court be pleased to order EUNICE WAKARIRU NGARI and ELIZABETH WAMBURA being the widows of the Respondent to take out Letters of Administration in order to appoint an Administrator to the Estate of the deceased within 30 days.*
2. *Costs of this application be provided for.*

In his affidavit the applicant states that the deceased one Nyaga Kamanga died in 2011 and was survived by his two wives Eunice Wakariru Ngari and Elizabeth Wambura who have not taken action towards applying to be appointed the personal representatives of the deceased. The applicant states that he lives on the deceased's parcel of land NGARIAMA/NGIRIAMBUI/116 with the two widows and that they now want to evict him, yet they have not moved to be appointed personal representatives of the deceased.

The respondents oppose the application in the affidavit of Eunice Wakariru Ngari sworn on 20/2/2014. It is deponed that the appeal against their husband was dismissed by Khaminwa, J on 24/1/2007 following which the deceased filed an application for removal of the inhibitions and cautions placed by the respondents in respect of NGARIAMA/NGIRIAMBUI/116. The applicant ought to have filed an appeal if he was not satisfied with the judgment of the High Court. The respondents argue that the applicant has not given any reason why he wants the respondents compelled to obtain letters of administration. In his supplementary affidavit, the applicant explains the reason behind his application. He states that he has learnt that the widows are secretly disposing of the deceased's estate.

The history leading to this application is that the applicant's parents Wambui Kamanga now deceased lost her claim against the deceased in Embu Resident Magistrate Civil Case No. 57 of 1982 where the judgment was delivered on 18/5/2001. An appeal against the judgment was filed in the High Court Civil Appeal No. 58 of 2001 which was dismissed by Khaminwa, J on 24/01/2007. It appears that no appeal

was filed against this judgment in the Court of Appeal.

Thereafter, the applicant substituted his mother Wambui Kamanga who died on 23/4/2003. The applicant applied unsuccessfully to set aside the judgment in HCCA 58 of 2001 in his application dated 9th August 2012. He later filed this application seeking to have the widows of the deceased compelled to take out letters of administration intestate.

It is not in dispute that the appeal in this case was dismissed on 24/7/2007 and that no appeal was preferred against the judgment. The applicant has now introduced a totally new subject in this appeal. He has not explained how his application is related to the already determined appeal. The reason he has advanced that the deceased's estate is being disposed of by the respondents is neither here nor there. This is because he has not explained the interest he has in the estate of the deceased apart from mentioning that he lives on the deceased's land.

I am in agreement with the respondent that if the applicant considers himself an heir of the deceased's estate, the correct procedure to follow is to file a citation under the law of succession Act and cite the respondents. This appeal having been determined and no appeal preferred cannot be re-opened for determination of unrelated issues.

I find that the application has no merit and I dismiss it with costs to the respondents.

DELIVERED, SIGNED AND DATED AT EMBU THIS 27TH DAY OF JANUARY, 2015.

F. MUCHEMI

JUDGE

In the presence of:-

Ms. Muriuki for Ms. Muthoni for Respondent

Applicant in person

F. MUCHEMI

JUDGE