



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1927 OF 2013

IN THE MATTER OF THE ESTATE OF JAMES MURIITHI GITHUA (DECEASED)

FILOMENA KINANU.....APPLICANT

VERSUS

ANN WANJIRU MURIITHI.....1ST RESPONDENT

SANDRA NJERI MURIITHI.....2ND RESPONDENT

ORDER

1. The applicant filed this summons for the revocation and/or annulment of the grant that was issued to ANN WANJIRU MURIITHI and SANDRA NJERI MURIITHI (the respondents) on 6th August 2013 in respect of the estate of the deceased JAMES MURIITHI GITHUA who died intestate on 10th April 2013. The respondents are the widow and daughter, respectively, of the deceased. The basis of the application was that the applicant was the second widow of the deceased (with whom they had two children) and yet she had not been informed of, and involved in, the Succession proceedings leading to the grant. On the basis that she served the summons and got no response, she was allowed to testify and call witnesses to support the case. The witnesses were the brother and sister of the deceased who said that they knew the deceased to have this second family.
2. I have perused this file and noted that the applicant first came to this Court on 2nd August 2013 for grant of letters of administration and *ad litem* for the purposes of enabling her to file a case for damages following the death of the deceased in a road accident. In the file was also a citation to 1st respondent. On 29th January 2014 her advocate MRS. MORARA went before Justice Kimaru on the application and citation. Counsel then informed Court that she had since learnt that the respondents had successfully petitioned for a grant in High Court P & A No. 1245 of 2013 at Nairobi. An order was made withdrawing the applications and the applicant advised to pursue her claim in P & A No. 1245 of 2013. Quite unfortunately, the applicant brought the instant application in this file.
3. I have called for and perused the file in P & A No. 1245 of 2013. The petition was filed on 13th May 2013, grant issued on 6th August 2013, confirmed on 27th May 2014 and certificate issued on

same day. Of importance, the advocates acting for the respondents were GICHUKI KING'ARA & Co. Advocates. The instance summons was served on OKINDO OGUTU & CO. Advocates who had entered appearance on 11th November 2013 on the citation. It is clear that once the application and citation were withdrawn that ended the representation on behalf of the respondents. It follows that the summons ought to have been served personally on the respondents. That was not done.

4. It is because of the foregoing that I make the following orders:-
- a. the citation and application for grant of letters of administration *ad litem* were ordered withdrawn on 29th January 2014 and the applicant directed to pursue her claim in P & A No. 1245 of 2013, and those orders are still in place;
 - b. the summons for revocation and/or annulment that were filed herein are consequently incompetent, as the file ought to have been closed;
 - c. in any case, the summons were not served on the respondents;
 - d. the summons are hereby struck out, but, because this is a family dispute, there is leave for the applicant to file the application in P & A 1245 of 2013; and
 - e. the proceedings of 11th February 2015 are hereby set aside.

DATED and DELIVERED at NAIROBI this 13th February 2015.

A.O. MUCHELULE

JUDGE