

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NUMBER 34 OF 2004 (OS)

GEOFFREY KINYURU NJENGA 1ST PLAINTIFF

TERESIA MUKAMI NJENGA. 2ND PLAINTIFF

VERSUS

GEOFFREY KIRURI GACHARA. DEFENDANT

RULING ON DIRECTIONS

1. This is a suit commenced by way of an Originating Summons dated 19th January, 2004. It sought for the identification of the true heirs to the estate of Serah Wanjiku Njenga. In the alternative, it sought a determination as to whether the Estate of the Late Serah Wanjiku Njenga is to be administered in accordance with which Certificate of Confirmation between Succession Cause No. 2680 of 2000 and Succession Cause No. 608 of 2003.

2. I have seen the Certificates of Confirmation of Grant made in both the said succession Causes. I have seen also the Replying Affidavit of Geoffrey Kiruri Gachara sworn on 30th January, 2004. In that affidavit, the deponent alleges that the Certificate of Confirmation in Succession Cause No. 2680 of 2000 was revoked by a consent recorded on 21st January, 2004. He annexed as exhibit GK G (1) some handwritten proceedings to that effect. They are shown to be signed by a Mr. P. S. K. Kimiti for the Petitioner and a Mr. G. Sogomo for the Applicant.

3. I find this exhibit intriguing in that, the alleged proceedings do not show in which proceedings the consent was being recorded. It is also not clear whether the court adopted the alleged consent as an order of the court. To say the least, those proceedings are neither endorsed by the court nor certified for them to be authentic.

4. In my view, because of what I have stated above, the dispute herein can only be properly adjudicated if all the matters referred to above are before the same court. i.e. this suit and the said two Succession Cause No. 2680 of 2000 and Succession Cause no. 608 of 2003, respectively.

5. Since the matter arises out of the said Succession Causes, the dispute herein should be determined by the Family Court.

6. Accordingly, I make the following orders: -

a) This file be and is hereby transferred to the Family Division of this Court.

b) This file together with court file for

(i) Succession Cause No. 2680 of 2000 In the Matter of the Estate of the Late Serah Wanjiku Njenga.

(ii) Succession Cause No. 608 of 2003 in the Matter of the Estate of the late Serah Wanjiku Njenga be placed before the Head of the Family Division on 4th May, 2015 for directions as to the hearing and determination of this matter and for further orders.

DATED, Delivered and Signed at Nairobi this 25th day of March, 2015.

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A MABEYA

JUDGE