

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

PROBATE AND ADMINISTRATION DIVISION

SUCCESSION CAUSE NO. 2705 OF 2013

IN THE MATTER OF KIMANI CHEGE (DECEASED)

R U L I N G

1. Victor Joseph Wainaina Kamiti petitioned the court as a nominee of Sarah Wanjiru Wainaina for a grant of letters of administration of the Estate of Kimani Chege who died domiciled in Kenya on 3rd February, 2012. His petition is for a grant limited for the purposes of representing the deceased in ELC 513 of 2008 (OS), at the High Court at Nairobi, or any other cause, or suit, which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in the cause or suit, until a final decree shall be made therein and carried onto complete execution.

2. The Petitioner states that the suit aforesaid was determined by the decision of Okwengu J (as she then was), delivered on 15th April 2011 in favour of the Plaintiffs therein. That the persons entitled to the administration of the Estate of Kimani Chege the deceased, are unable or unwilling to act and take out letters of administration to enable them be enjoined as a party in ELC 513 of 2008.

3. The Petitioner states that it is imperative that the suit be concluded by execution of the said judgment and consequently Sarah Wanjiru Wainaina, the first Plaintiff, has nominated Victor Joseph Wainaina Kamiti to act and take out letters of administration to the Estate of Kimani Chege, for the purpose of representing the deceased in ELC 513 of 2008 aforesaid until completion of execution of the decree.

4. The Petitioner further prays that a grant of letters of administration do issue, limited to the purpose of Victor Joseph Wainaina Kamiti representing the deceased in ELC 513 of 2008 (O.S) at the High Court at Nairobi or in any other cause or suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the cause or suit, until a final decree shall be made therein and carried into complete execution.

5. The Petitioner states that at the time of his death the deceased had been sued, as the Defendant, by Sarah Wanjiru Wainaina and Victoria Anne Njeri Wainaina, as the Plaintiffs, and judgment had been delivered in favour of the Plaintiffs on the 15th day of April 2011 by Okwengu J (as she then was). The said judgement directed the Defendant to excise the disputed portion of land from Limuru/Ngecha/596 and transfer it to the Plaintiffs within 90 days of the date of the judgment, failure to which the Plaintiffs were at liberty to seek an order for the Deputy Registrar to sign the necessary documents in place of the Defendant, now deceased. The Plaintiffs were awarded costs of this suit as against the Defendant and Interested Party. The Deceased did not appeal against the decision of Okwengu J.

6. That as at the time of his demise, the Defendant had not transferred the parcel of land to the Plaintiffs as ordered by the court and that an application by the Plaintiffs was still pending seeking to have the Deputy Registrar sign the necessary documents in place of the Defendant. That no member of the deceased's family sought to be substituted in his place and in such circumstances the application could not be heard. That despite writing to one of the sons of the deceased on the administration of the estate of the deceased, the said son has ignored the request and there is general unwillingness by the persons entitled to administer the Estate of the deceased to take out grant of letters of administration of the Estate, hence this application.

7. **Rule 14** of the **Fifth Schedule** applies in very limited and specific cases. In the cause before me the

persons entitled in priority to petition the court for letters of administration are determinable. They appear to have deliberately neglected and or refused to petition for letters of administration with the aim of obstructing the course of justice. In my considered opinion the procedure that does commend itself to the circumstances of cause is to move the court by way of citation.

Reasons wherefore I order as hereunder:

- a) The Applicant do file citation against the persons entitled in priority to petition the court for letters of administration in the Estate of Kimani Chege.
- b) All relevant offices including the office of the Registrar of Births and Deaths, and the office of the Area Chief to accord the Applicant all necessary assistance.

SIGNED DATED and DELIVERED in open court this **19TH day of May 2015.**

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L. A. ACHODE

JUDGE