

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2547 OF 2010

IN THE MATTER OF THE ESTATE OF PETER NJOROGE KIMANI (DECEASED)

RULING

1. What is pending determination is the Summons for Revocation of grant dated 1st April 2014.
2. The response to it is a Preliminary Objection raised by the respondents. The objection is that the affidavit in support of the Summons is sworn by the advocate of the applicant instead of the applicants themselves, and therefore it is founded on hearsay.
3. I have noted that the application is founded on the affidavit of the applicant's advocate. It is improper for an advocate to swear an affidavit supporting an application under Section 76 of the Law of Succession Act, Cap 160, Laws of Kenya, given that such applications are heard orally in most cases. He cannot therefore be called as a witness to depose to matters of fact that his clients are best suited to testify on.
4. However, the mere fact that the affidavit in support of the application for revocation was sworn by the advocate for the applicant does not render it invalid or fatally defective. Whatever problems there may be with the application can be cured.
5. The order I make in the circumstances is that the affidavit in support of the application dated 1st April 2014 shall be supplemented by the affidavits of Mary Muria Njoroge and Monica Wangui Kerina, to be filed within thirty (30) days of the date of this order, in default of which the application dated 1st April 2014 shall stand dismissed.

DATED, SIGNED and DELIVERED at NAIROBI this 25TH DAY OF SEPTEMBER, 2015.

W. MUSYOKA

JUDGE