



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
SUCCESSION CAUSE NO. 1366 OF 1995

IN

IN THE MATTER OF THE ESTATE OF JAMES KARANJA alias

JAMES KIOI (DECEASED)

MARY WANGUI KARANJA.....1ST PETITIONER

SALOME NJERI KARANJA.....2ND PETITIONER

-VERSUS-

RHODA WAIRIMU KARANJA.....1ST RESPONDENT

JOHN KIOI KARANJA.....2ND RESPONDENT

RULING

1. The 2nd respondent moved the court by a summons dated 11th February 2014 seeking leave to prefer an appeal against a decision of this court dated 31st January 2014. The application is premised on several grounds that are set out on the face of the application as well as in the affidavit in support sworn by the 2nd respondent. I need not go into those grounds for now.
2. Before I consider the application on its merits, I need to address the question whether there is a right of appeal against the decision of the High Court sitting as a probate court on matters governed by the Law of Succession Act.
3. The relevant provisions of the Law of Succession Act on appeals are to be found in section 50. Section 50 provides as follows:-

“50 (1) An appeal shall lie to the High Court in respect of any order or decree made by a resident magistrate in respect of any estate and the decision of the High Court thereon shall be final.

(2) An appeal shall lie to the High Court in respect of any order or decree made by a Kadhi's Court in respect of the estate of the deceased Muslim and with prior leave thereof in respect of any point of Muslim law, to the Court of Appeal.”

4. The above provisions of the law undoubtedly deal with any order or decree emanating from the Resident Magistrate Court and Kadhi's Court. A careful examination of the law reveals that there is no provision in the *Law of Succession Act and this probate and administration rules* which requires an applicant to obtain leave to appeal against the decision of the High Court. In *Julius Kamau Kithaka vs. Waruguru Kithaka Nyaga and two others* [2013] eKLR Odek J.A said as follows concerning appeals from the High Court as a probate court :

"It is trite law that where any proceedings are governed by a special Act of Parliament, like in this case, the Law of Succession Act, the provisions of such an Act must be strictly construed and applied. See Josephine Wambui Wanyoike vs. Margaret Wanjira Kamau & another – Civil Appeal No. 279 of 2003 and H. Adongo & Others vs. Savings and Loan Society (Kenya) Ltd Civil Appeal No, 22 of 1987. Therefore, what is in the Law of Succession Act is what was intended to be therein in the manner and extent it is there. What is not therein expressly is what was intended not to be there by the legislator. I find that the applicant in this case was not required to seek leave to appeal from the High Court."

Similar sentiments were expressed by the Court of Appeal in *Josephine Wambui Wanyoike vs. Margaret Wanjira Kamau & another* [2013] eKLR Civil Appeal No. 279 of 2003 where it was said that:

*"We hasten to add that the **Law of Succession Act** is a self-sufficient Act of Parliament with its own substantive law and rules of procedure. In the few instances where need to supplement the same has been identified, some specific rules have been directly imported into the Act through It's Rule 63(1)."*

5. I am persuaded, and it is my reading of section 50 of the Law of Succession Act, that no right of appeal arises from original decisions of the High Court as a probate court to the Court of Appeal. A right of appeal is statutory and since the Law of Succession Act has not provided for such a right the same does not exist. I find not at all upon which I can grant leave in the manner sought by the 2nd respondent.
6. Even if I were to find that there was a right of appeal to the Court of Appeal, and I reiterate here that such right does not exist in this case, the 2nd respondent would still have to make a case for grant of leave. Dr. Kuria cited the decision of the former Court of Appeal for Eastern Africa in *Sango Bay Estates Ltd and others vs. Dresdner Bank* (1971) EA 17, where it was noted that leave to appeal from an order in civil proceedings would be granted where *prima facie* it appears that there are grounds of appeal which merit serious judicial consideration.
7. I have carefully gone through the material placed before me and I am not convinced that there exists grounds of appeal that would warrant serious judicial consideration. The matters that I was called upon to determine in the application the subject of the ruling sought to be appealed against were matters that had already been dealt with by my predecessors. There was really nothing new in the 2nd respondent's case. Moreover the 2nd respondent did not make any serious effort to convince me that the proposed appeal did indeed raise issues that would merit serious consideration by the Court of Appeal.
8. Finally, the 2nd respondent raised the point that the decision dated 31st January 2014 was founded on a non-existent application. The application before court was dated 16th May 2013, whilst the decision was on an application dated 6th May 2013. It is true that the ruling refers to an application dated 6th May 2013 instead of 16th May 2013. This is a clerical error which arose from a slip. By virtue of section 99 of the Civil Procedure Act, the same is correctible by the court. I hereby do amend my ruling dated 31st January 2014 so that reference in it to the application dated 6th may 2013 shall be read to refer to the application dated 16th May 2013.
9. In the end, I find that the 2nd respondent has failed to make out a case for grant of leave to appeal.

The application dated 11th February 2014 is therefore without merit. I hereby dismiss the same with costs.

DATED, SIGNED and DELIVERED at NAIROBI this 21st DAY OF March, 2014.

W. MUSYOKA

JUDGE