



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2649 OF 2004

AND

IN THE MATTER OF LUKAS WAWERU- (DECEASED)

RULING

1. There are two pending application, one dated 25th June 2013 and another dated 1st July 2013. That dated 25th June 2013 seeks eviction and related orders while that dated 1st July 2013 seeks the setting aside of orders made on 12th June 2013.
2. This ruling relates to the application dated 1st July 2013. I had on 2nd July 2013 decided that the said application of 1st July 2013 be determined first.
3. The orders made on 12th June 2013 were predicated on an application dated 5th June 2013. The said application sought restraining orders against the objector and her removal from one of the assets and a further order relating to bank details.
4. The application of 5th June 2013 was first placed before me on 6th June 2013 under certificate of urgency, and I directed that the same be served on the respondents for *inter partes* hearing on 12th June 2013. There is an affidavit of service on record sworn on 11th June 2013. It shows that the application was served on the counsel for the respondents. Both acknowledged service by affixing their official stamp marks on 7th June 2013.
5. When the matter came up on 12th June 2013, counsel for the applicant was present, but the respondents were not represented. I was satisfied that there had been satisfactory service and the respondents had not responded to the application. I allowed it in the terms proposed by the applicant.
6. It is these orders that the application dated 1st July 2013 seeks to reverse. The applicant's case is that the matter was not on the day's cause list for 12th June 2013 and that is the reason why they were not in court when the application dated 5th June 2013 was argued. The applicant has attached the full cause list for 12th June 2013 to demonstrate her case.
7. The application dated 1st July 2013 was served on the respondent. She filed a reply *vide* an affidavit sworn on 29th July 2013. She concedes that the matter was not listed on the main cause list for 12th June 2013, and was placed before the court on the basis of an addendum list. There is no indication that the existence of the addendum list was brought to the attention of the respondents.
8. I have anxiously considered the pleadings before me as well as the written submissions by counsel. I

have also carefully perused the record. It is common ground that the application dated 5th June 2013 was not scheduled in the cause list for 12th June 2013, and was placed before the judge on an addendum. It is not clear whether this addendum was brought to the attention of all the parties. The justice of the situation appears to me to favour allowing the application dated 1st July 2013 so that all the parties get equal opportunity to canvass the application dated 5th June 2013.

9. I will therefore allow the application dated 1st July 2013 and make the following orders:-

- (a) That the orders made by this court on 12th June 2013 are hereby set aside;
- (b) That the respondents to the application dated 5th June 2013 shall file their replies to that application within fourteen (14) days of this ruling;
- (c) That the matter shall be mentioned after 14 days of this ruling for further directions.

DATED, SIGNED and DELIVERED at NAIROBI this 25th DAY OF April, 2014.

W. MUSYOKA

JUDGE

In the presence of Mr. Gatumuta for Mr. Ngugi advocate for the objector.

No appearance for the respondent.