

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.1688 OF 2011

IN THE MATTER OF THE ESTATE OF CHRISTINO GICHANGA CHUI (DECEASED)

BENSON MWANGI GICHANGA

ALICE NJERI MWANGI

JACKSON GICHANGA CHUI.....APPLICANTS

VERSUS

KIRUNDI & CO. ADVOCATESRESPONDENT

RULING

The Applicants filed an application pursuant to the provisions of **Sections 63(e), 1B, and 3A** of the **Civil Procedure Act** seeking orders from this court to exclude the firm of Kirundi & Company Advocates (Respondent) from acting on behalf of the Objectors in this matter. The Applicants claim that the Respondent would be in conflict of interest if it acted for the Objectors because the said firm was the advocates for the greater Chui family. The grounds in support of the application are stated on the face of the application. The application is supported by the annexed affidavit of the Applicants. The application is opposed. The Respondent filed grounds in opposition to the application.

During the hearing of the application, this court heard oral rival submission made by Mr. Njiru for the Applicants and by Mr. Mwangi for the Objectors. Mr. Njiru submitted that the Respondent firm had acted for the family of the deceased for a long time. They had been mandated by the family to collect rent from various properties belonging to the estate of the deceased. Mr. Njiru explained that in so far as there was no dispute between the beneficiaries of the estate of the deceased, there would be no objection to the said firm acting on behalf of the estate of the deceased. However, since there was now a dispute between members of the family, it would not be advisable for the said firm to act for some of the beneficiaries of the deceased. According to the Applicants, the said firm ought to be neutral in the dispute. The Applicants were of the view that should the court allow the Respondent firm to act for the Objectors, there would be conflict of interest. Mr. Njiru urged the court to grant the application with costs.

In response, Mr. Mwangi submitted that the Respondent was opposed to the application. He stated that the Applicants had not established where the conflict of interest would arise or what prejudice they would suffer if the Respondent acted for the Objectors. As regard the issue of collection of rent, Mr. Mwangi submitted that the family had agreed that the firm collects the rent from the properties that comprise the estate of the deceased so as to avoid wastage and intermeddling. He explained that this fact alone did not amount to conflict of interest. He urged the court to dismiss the application with costs.

This court has carefully considered the facts of this application. It has also considered the rival arguments made by counsel for the parties to this application. The issue for determination is whether the Applicants establish a case for this court to exclude the Respondent firm from the proceedings in this case. The dispute between the Applicants and the Objectors relate to the question of who are the beneficiaries of the estate of the deceased. The Objectors took issue with the fact that the Applicants had excluded them in the list of beneficiaries of the estate of the deceased. That issue is yet to be heard and determined by this court. The Applicants have applied for the Respondent firm to be excluded from these proceedings because they allege that the said firm would be conflicted if it is allowed to act for the Objectors in this case. The basis of the Applicants' application is that since the Respondent firm collects rent from

properties that comprise the estate of the deceased, it would be in conflict of interest if it acts for the Objectors. The Respondent firm does not see any conflict of interest in that fact. Having evaluated the conflicting submission, it was clear to this court that indeed there is no conflict of interest that has been established by the Applicants. The fact that the Respondent firm collects rent on behalf of the estate of the deceased does not amount to a situation where conflict of interest may arise. The Respondent firm is required in law to account for the rent it receives on behalf of the estate of the deceased. The Respondent firm would not abdicate from its responsibility to render accounts if it acts on behalf of some of the beneficiaries in these proceedings. The Respondent firm will present the Objectors' case to the court without interfering with its duty to render accounts for the rent received. There is no information that the Respondent firm has received from the Applicants that it may use against them during the hearing of the dispute. The Respondent firm has never acted for the Applicants, specifically, in respect of the matters in dispute in this case for there to arise a situation of conflict of interest.

In the premises therefore, this court holds that the Applicants have failed to establish conflict of interest in respect to the Respondent firm acting for the Objectors. The application is dismissed but with no orders as to costs. It is so ordered.

DATED AT NAIROBI THIS 22ND DAY OF APRIL, 2014

L. KIMARU

JUDGE