

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.3458 OF 2004

IN THE MATTER OF THE ESTATE OF FRANCIS MWAURA WARUINGI (DECEASED

FRANCIS WARUINGI MWAURA & 4 OTHERS.....APPLICANTS

VERSUS

HENRY NJOROGE KAMAU.....RESPONDENT

RULING

On 19th December 2011, W. Karanja J (as she then was) revoked the grant that had been issued to the Respondent. In her considered Ruling, the learned Judge found as a fact that the Respondent had fraudulently and willfully misrepresented to the court that he was a son of the deceased. In the material part of the Ruling (page 8), the learned Judge made the following observations:

“It is a (recognized) principle of law that no litigant should be allowed to benefit from his own wrong doing – or illegality. This being a court of justice, it would be a perversion of justice to allow the Respondent herein to benefit from his own illegal acts. If indeed the Applicant does not want to pursue the matter, still the proper legal channels must be followed. The law must be complied with. The grant should be revoked to enable the process which will not be tainted with misrepresentation and on fraud to be reinstated. The Applicant can then renounce his rights to apply for the grant of letters of administration or to inherit the property in favour of the Respondent herein. That way, the law will have been followed and justice will carry the day.”

Upon revoking the grant, the learned Judge ordered the Respondent to pay the cost of the proceedings. The Applicants presented their bill of costs before court.

The costs were taxed at Kshs.204,380/- by the Deputy Registrar of this court.

Upon being requested to settle the bill of costs, the Respondent moved this court by Notice of Motion in an application dated 7th March 2014. The application is predicated on the provisions of **Section 1, 3 and 3A** of the **Civil Procedure Act**. The Respondent seeks to stay the execution of the said costs pending the hearing and determination of the **Succession Cause No.695 of 2013**. The respondent further prayed that he be permitted to deposit in court the sum of Kshs.180,000/- as security pending the outcome of **Succession Cause No.695 of 2013**. The application is supported by the annexed affidavit of the Respondent. The Respondent swore a supplementary affidavit in further support of his application. The application is opposed. The Applicants filed grounds in opposition to the application. Lucy Waceke Njuguna also swore a replying affidavit in opposition to the application.

During the hearing of the application, this court heard oral rival submission made by Mr. Ndegwa for the Respondent and by Mr. Kamau for the Applicants. This court has carefully considered the said submission. The issue for determination by this court is whether the Respondent made a case for this court to grant the orders sought in his application. As stated earlier in this Ruling, the application is predicated on the provisions of **Sections 1, 3 and 3A** of the **Civil Procedure Act**. The above sections of the **Civil Procedure Act** essentially save the inherent jurisdiction of this court to do justice to the parties notwithstanding that there may be no specific provisions of law in existence addressing the particular issue in dispute. In the present application, it was common ground that this court awarded costs to the

Applicants. The costs have been taxed. The Respondent has not challenged the said tax costs on reference to this court pursuant to **Paragraph 11** of the **Advocates Remuneration Order**. As it were, the said costs awarded to the Applicants are payable. The Respondent seeks to stay the payment of the costs that were awarded to the Applicants on the grounds that there is another succession dispute pending between the parties herein involving the estate of the same deceased person. These proceedings are pending in **Succession Cause No.695 of 2013**. This court wondered where nexus was between the valid orders issued by this court for the Respondent to pay costs and the other succession proceedings which are still pending hearing and determination.

As noted earlier in this Ruling, this court found as a fact that the Respondent fraudulently misled this court into issuing him with a grant of letters of administration when he knew that he was not a son of the deceased as he had declared in the petition. To compound the mischief, the Respondent listed his wife as a daughter of the deceased. In the considered opinion of this court, the trial court properly awarded costs to the Applicants. There is no provision of law that gives this court jurisdiction to stay execution of the payment of costs by the Respondent to the Applicants because there is pending before this court another case involving the same parties.

The application lacks merit and is hereby dismissed with costs.

DATED AT NAIROBI THIS 9TH APRIL 2014

L. KIMARU

JUDGE