

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO.915 OF 1999

**IN THE MATTER OF THE ESTATE OF THE LATE HERMAN GACHUHI GATIRI –
(DECEASED)**

CORNELIUS KIMANI.....1ST APPLICANT

ANN WANJIKU.....2ND APPLICANT

EMILY WAMAITHA.....3RD APPLICANT

VERONICA WAIRIMU.....4TH APPLICANT

VERSUS

MARGARET WAITHERERO.....RESPONDENT

RULING

On 8th September 2005, Cornelius Kimani moved the court by summons under **Section 26** of the **Law of Succession Act** seeking orders from the court for reasonable provision to be made to each of the Applicants out of the net estate of the deceased before the grant is confirmed. The application was opposed. The Respondent filed a replying affidavit in opposition to the application. When the application came up for hearing before Njagi J on 30th October 2012, the Applicants informed the court they had withdrawn the application in a letter to the court dated 19th July 2012. Mr. Ng'ang'a for the Respondent insisted that the Applicants pay the costs of the withdrawn application to the Respondent. This was in light of the fact that the Applicants had a penchant for filing and withdrawing applications. Learned counsel for the Respondent interpreted this behaviour by the Applicants to amount to vexation of the Respondent. Miss Wambua for the Applicants was of the view that the costs of the application should be paid out of the estate of the deceased. That was the issue that was to be determined by Njagi J before he ceased having jurisdiction in the Family Division.

When counsel for the parties appeared before this court on 13th May 2013, they requested the court to make a Ruling on the basis of the proceedings taken before Njagi J. The issue for determination by this court is therefore whether the Applicants should pay the costs of the Respondent for the withdrawn application. Having perused the record of the court, it was apparent to this court that the Applicants have filed several applications which have not been prosecuted. However, a determination is yet to be made in regard to the matters in dispute between the Applicants and the Respondent. This court is of the view that the issue as to whether the Applicants should pay the costs of the withdrawn application shall await the determination of the substantive issues by the court.

In the premises therefore, this court holds that the application dated 8th September 2005 stands withdrawn with no orders as to costs. It is so ordered.

DATED AT NAIROBI THIS 25TH DAY OF JULY, 2014.

L. KIMARU

JUDGE