

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO.1064 OF 1994

**IN THE MATTER OF THE ESTATE OF THE LATE ISAAC KIRERU NJUGUNA –
(DECEASED)**

**PATRICK NJUGUNA KIRERU.....1ST
APPLICANT**

**HANNAH MWIHAKI.....2ND
APPLICANT**

VERSUS

**EVANS KIMANI NJUGUNA
.....RESPONDENT**

RULING

On 12th September 2002, Aluoch J (as she then was) made the following observations in respect of an application that had been lodged by the Applicants seeking to have the grant that had earlier been issued to the Respondent and one Patrick Njuguna revoked:

“For the reasons I have considered above, I find that I must proceed under Section 76 of the Succession Act, and revoke the grant of letters of administration issued to Njuguna Kimani and Patrick Njuguna on 13th December 1994 and subsequently confirmed, vide certificate of confirmation of grant dated 24th May 1996. It is now upon the deceased’s family to either retain the previous administrators, or agree on who shall be the administrator to the deceased’s estate. Whoever the administrators are, they must ensure that all survivors of the deceased agree to a mode of distribution of the deceased’s estate.”

This court has perused the record of the court in respect of subsequent proceedings that have taken place in this succession cause. It is evident that after the grant was revoked, new administrators have not been appointed. The estate of the deceased remains todate unadministered. What the parties to the succession dispute have been engaged in is the filing of interlocutory applications which have in the long run resulted in non-determination of the real issues in controversy. This court is of the view that unless the parties are directed to address their attention to the real issue in controversy, namely, who should appointed the administrators of the estate of the deceased, the determination of the extent of the estate of the deceased and finally the determination of the mode of distribution to be adopted in respect of the properties that comprise the estate of the deceased to the beneficiaries, the parties will engage in a never ending game of one-upmanship that will not lead to the resolution of the dispute.

The application dated 31st October 2011 is one such application which the Applicants sought the decision of the court which will ultimately not lead to the resolution of the dispute. In the application, the Applicants have sought for an order of this court to commit the Respondent to civil jail for allegedly failing to obey an order of this court that had earlier been issued by this court on 19th May 2011. That order was issued exparte. There is no evidence that the Respondent was served. The Respondent complained that he was not aware of the proceedings. Indeed, the Respondent made an application to have the said exparte order set aside. That application is still pending hearing and determination.

This court is of the view that the time for the parties to engage in side shows must come to an end. This court hereby directs that the real issues in controversy must be given priority to enable the final determination of the dispute. This court has identified the following issues to be the issues for determination:

- I. The determination of who shall be appointed as the administrator/administrators of the estate of the deceased.
- II. The determination of the extent of the estate of the deceased. The Respondent claims that he jointly owned one of the properties that comprise the estate of the deceased with the deceased. The Respondent will have to adduce evidence to establish this fact.
- III. The distribution of the properties that comprise the estate of the deceased to the identified beneficiaries.

These issues will only be determined by the court after parties adduce *viva voce* evidence. The parties are ordered to file their witness statements within thirty (30) days of the date of the delivery of this Ruling. They are ordered to serve the opposing party with the said witness statements within the same period. Thereafter, the parties shall be at liberty to fix the case for hearing at the Registry. There shall be no orders as to costs. It is so ordered.

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

L. KIMARU

JUDGE