



REPUBLIC OF KENYA
HIGH COURT AT NAIROBI (NAIROBI LAW COURTS)

SUCCESSION CAUSE NO. 635 OF 1995

IN THE MATTER OF THE ESTATE OF NAOMI WANJIKU KIREHU- (DECEASED)

RULING

The application for determination is dated 7th March 2012. It is brought by Daniel Kirehu Murai. It seeks that Mr. Godwin Wang'ong'u, Advocate do release a sum of Kshs.2,000,000.00, allegedly awarded as compensation in a civil suit, to the applicant. It also seeks that the said advocate do release certain documents, set out in prayer number 3 of the application to the applicant. It also seeks to the appointment of the applicant as administrator of the estate of the deceased in the place of Mary Muthoni Kirehu, who has died deceased. The other prayer is that the compensation ordered in the civil suit be deposited in court in this matter and not in the civil suit.

Court files in respect of three different but related causes have been put together for the purpose of assisting me in drafting this ruling. These are:-

- (1) High Court Succession Cause No. 635 of 1995, In the matter of the estate of Naomi Wanjiku Kirehu.
- (2) High Court Succession Cause No. 1398 of 2008, In the matter of the estate of Naomi Wanjiku Kirehu.
- (3) High Court Civil Cause No. 845 of 1996, Estate of Naomi Wanjiku Kirehu -vs- Josiah Mucheru and another.

I have carefully perused through all these three files.

What I have gleaned from them is that Naomi Wanjiku Kirehu was a sister of the applicant. She died in a road traffic accident on 10th June 1994. The mother of Naomi Wanjiku Kirehu, her name was Mary Muthoni Kirehu, moved the High Court at Nairobi through Wang'ongu & Company, Advocates, in HCSC No. 635 of 1995, for letters of administration intestate. These were granted to her on 31st May 1995. On 3rd May 1996, as administrator of the estate of Naomi Wanjiku Kirehu, Mary Muthoni Kirehu filed suit against the owners of the vehicles involved in the accident which led to the death of Naomi Wanjiku Kirehu. The suit was filed through Wang'ong'u & Company, Advocates and was HCCC No. 845 of 1996. On 17th June 2008, Daniel Kirehu Murai, in his capacity as brother of the deceased Naomi Wanjiku Kirehu, filed a petition at the High Court, Nairobi, in HCSC No.1398 of 2008 seeking representation to the estate of the said Naomi Wanjiku Kirehu. A grant was made to him on 14th October 2008. Mary Muthoni Kirehu, the mother of the deceased, died on 6th December 2002 and representation to her estate was obtained by Daniel Kirehu Murai. As matters stand now, there are two grants in respect of the estate of Naomi Wanjiku Kirehu, one to Mary Muthoni Kirehu and the other to Daniel Kirehu Murai. The compensation suit, HCCC No. 845 of 1996, proceeded to full trial before Anga'wa J and judgment was pronounced on 25th January 2001, dismissing the suit. A final decree was extracted and

issued on 6th August 2001.

From the record, it is clear that the claims against Mr. Godwin Wang'ong'u, advocate, are without foundation. The civil suit for compensation was dismissed and obviously no compensation funds could have been paid to Mr. Wang'ong'u based on the said suit. I have noted from the file in HCCC No. 845 of 1996 that the documents that the applicant seeks to be released to him were produced as exhibits in that suit. Furthermore, even if judgment had been pronounced in favour of the estate, which was not the case, and even if Mr. Wang'ong'u had received the judgment money, which was not the case, this succession cause would not be the proper forum for pursuing surrender of the judgment moneys from the advocate. There is no money due on the civil suit and therefore there is no basis upon which an order can be made that the said compensation funds be deposited in this cause.

The other issue is that the applicant is not the holder of the grant made in this cause. Grant of letters in this cause was made to Mary Muthoni Kirehu and therefore she is the administrator of the estate of the deceased for the purpose of this cause. The applicant has no *locus standi* therefore to seek the prayers that he has sought in this case with respect to release of the judgment funds. He should have sought those orders in his cause, HCSC No. 1398 of 2008.

I note that he also seeks to be appointed administrator of the estate of the deceased in this cause; this is to take the place of Mary Muthoni Kirehu, who is now also deceased. This is not necessary. The applicant is already the administrator of the estate of the deceased Naomi Wanjiku Kirehu by dint of his appointment in HCSC No. 1398 of 2008.

I will make the following final orders:-

- (1) That the application dated 7th March 2012 is wholly unmerited and the same is hereby dismissed with costs;
- (2) That HCSC No. 635 of 1995 and HCSC No.1398 of 2008 are hereby consolidated and HCSC No. 1398 shall be the lead file;
- (3) That the grant made in HCSC No 635 of 1995 to Mary Muthoni Kirehu is hereby revoked as it has become inoperative following her death;
- (4) That the grant made to Daniel Kirehu Murai in HCSC No. 1398 of 2008 is hereby affirmed and the said Daniel Kirehu Murai shall continue to be the administrator of the estate of Naomi Wanjiku Kirehu.

It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 16th DAY OF May, 2013.

W. Musyoka
Judge