

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO: 527 OF 1981

IN THE MATTER OF THE ESTATE OF MBIYU KOINANGE - (DECEASED)

RULING

There were two oral application made in the course of the hearing yesterday, 18th July 2013. The first was by Mr. N and the second one by Mr. N. I will decide the two applications simultaneously.

Mr. N made his application on behalf of the law firms of Waweru Gatonye & Co. Advocates, and Waruhiu & Gathuru, Advocates. The said firms acted at some stage or other in the administration process of the estate of the late M K. Mr. N's case was that the two law firms have have been mentioned and would like to be represented in the proceedings and in that respect they would like to be admitted and thereafter lodge documents in the cause. It was also stated that they have a claim against the estate in respect of services rendered, and they would like provision made for them.

That application was opposed by counsel appearing in the matter. They were of the opinion that the same was being made too late in the day. The said firms had opportunity to come on record earlier and lodge in court their respective papers. It was submitted that they were not even mentioned adversely, and therefore if need arose for them to come and clarify any issues they can be summonsed in the usual manner. On their claims against the estate, it was submitted that they ought file their bills of costs for taxation in the usual way.

Mr. N application related to **H.C. Divorce Case No. 51 of 1987**. There is an affidavit filed in that cause that mentions Ms. M N M, the witness currently being cross-examined. He applied that the said divorce file be availed as its contents have a bearing on the current proceedings. There was unanimity that the file should be availed, the only point of departure being with respect to how the same should be presented to the court.

On the first application, after going through the record, I do not find testimony that has been adverse to the two law firms. Indeed, it is only the firm of Messes. Waweru Gatonye & Co. Advocates that has been mentioned with respect to its holding a deposit with respect to the sale of "M(withheld) Farm". No wrongdoing or impropriety has been attributed to that firm at all. The firm of Waruhiu & Gathuru, Advocate has not been mentioned at all. I do not therefore see the need to have the two admitted to these proceedings. If need arises for them to clarify any issues they shall be summoned. On their claims against the estate the best cause of action for them should be having their bills taxed by the Deputy Registrar.

On the second application, it is common ground that M N M is alleged to have had married C K K after the demise of the late M K. The affidavit of C K K filed in **HCDC No. 51 of 1987** is on record. M N M is apparently mentioned in **HCDC No. 51 of 1987**. The proceedings in HCDC No. 51 of 1987 are therefore relevant to these proceedings. It would be in the interests of justice that the file in respect of **HCDC No. 51 of 1987** be availed.

The final directions/orders that I make with regard to the two applications are:-

1. That the application to have the law firms of Messrs. Waweru Gatonye & Co. Advocates and Messrs Waruhiu & Gathuru, Advocates represented in these proceedings is rejected.
2. That the advocates from the said firms who handled any business of the estate shall be summoned to clarify any issues arising from these proceedings as and when it shall become necessary.
3. That if the said firms have any claims against the estate arising from the services they rendered to

the estate or to any party to this cause, they are at liberty to file and tax their bills of costs before the Deputy Registrar in the usual manner.

4. That the court file in respect of **HCDC No. 51 of 1987** shall be availed for the purpose of these proceedings, and the Deputy Registrar is hereby directed to cause the said file to be traced and to produce the said file at the next hearing of this cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF JULY, 2013.

W.M. Musyoka

JUDGE