



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILLIMANI LAW COURTS

Succession Cause 2376 of 2010

IN THE MATTER OF THE ESTATE OF LIVIA LE POER TRENCH - DECEASED

ANTHONY MUTAHI KIMARU.....1ST APPLICANT

NICHOLAS MAINA WACHIRA.....2ND APPLICANT

FRANCIS MACHARIA WACHIRA.....3RD APPLICANT

JOSEPH M'UMBELE M'ETITIKA.....4TH APPLICANT

DABASO HALIKANO HAMO.....5TH APPLICANT

FATUMA BASHIR DABASO.....6TH APPLICANT

CHARLES LOMBO M'MWONYO.....7TH APPLICANT

WAMUYU KINGORI KAHUHO.....8TH APPLICANT

SIMON NJUGUNA KIBEBE.....9TH APPLICANT

SAMUEL MWINGIRWA WARUI.....10TH APPLICANT

SAMUEL WACHIRIA WARUI.....11TH APPLICANT

FRANCIS MURIUNGI.....12TH APPLICANT

ROSE NJOKI MUCHEMI.....13TH APPLICANT

LUCY NYARUWAI NDERITU.....14TH APPLICANT

WILSON KANYI WANDERI.....15TH APPLICANT

SAMUEL TIANDA.....16TH APPLICANT

RULING (DIRECTIONS)

The hearing of summons for revocation of grant dated 14th December 2011 was deferred when counsel on record differed on whether the same should proceed by way of affidavit or oral evidence. The court had on 22nd February 2012 expressed the view that the same was capable of determination on the basis of the affidavits filed, a view accepted by learned counsel for the respondent Mr. Kemboi, but objected to by learned counsel for the applicants Mr. Kinyanjui .

The latter holds the view that the executor of the deceased will, Mr. George Oraro, Advocate needs to be examined on oath for reasons that the 1st objector /applicant Anthony Mutahi Kimaru alleges that the executors have concealed the existence of certain funds belonging to the estate and held in a bank account known to the said objector.

The record shows that this matter was certified urgent on the grounds that the will upon which the estate devolves many have been forged, the testator appears to have disinherited her sole surviving beneficiary and that there are ***“those applicants who will be evicted”*** from the estate land if the grant of probate issued to the executors is confirmed.

The applicants are the former employees of the deceased testator. The issue of their locus standi clearly arises. They are aware that there is a will in place but seek to challenge it on the ground that the same could not have been made by the deceased, whom they claim had made an oral will in their favour.

The deceased’s surviving heir is not said to be complaining at all and the applicants have not cited her to push forward their case. She is not said to have appointed them to push her case either. I am not

persuaded that the applicants have the locus standi and or a strong enough legal interest in the matter to sway me from my view that the matter is capable of determination on the basis of the affidavits filed or that they have the right to examine the executor on oath, either for their own benefit or that of the surviving daughter of the deceased. I am guided by the provisions of section 9(2) of the Law of Succession Act (Cap 160) which provides that:-

“(2) No oral will shall be valid if, and so far as, it is contrary to any written will which the testator has made, whether before or after the date of the oral will, and which has not been revoked as provided by sections 18 and 19”

Section 18(2) of Cap 160 further provides that a written will shall not be revoked by an oral will. I direct therefore that the matter proceeds by way of affidavit evidence as earlier ordered. The delay in delivery these directions, which was caused by the misfiling of this file in the cabinet and therefore being overlooked and forgotten is highly regretted.

Orders accordingly.

DATED, SIGNED and DELVIERED at NAIROBI this 11TH DAY OF May, 2012.

M.G. MUGO

JUDGE

In the presence of :

No appearance for the plaintiffs.

Miss. Oburu for defendants.