

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.142 OF 1998 AS CONSOLIDATED WITH

SUCCESSION CAUSE NO.1654 OF 1999

IN THE MATTER OF THE ESTATE OF THE LATE (MAJOR) CHARLES MUHORO

KIONGO (DECEASED)

MARIA WAIRIMU MUHORO.....
PETITIONER

VERSUS

FRANCISCA MATOLO KAMANTHE.....
OBJECTOR

RULING

The objector filed an application pursuant to the provisions of Section 47 of the **Law of Succession Act** and Rule 73 of the **Probate and Administration Rules** seeking orders of this court to compel the petitioner to release to the objector the sum of Kshs.500,000/- as was ordered by the court pending the confirmation of grant. The grounds in support of the application are stated on the face of the application. The application is supported by the affidavit of Kevin Muhoro Kiongo. The application was filed in court on 9th December 2010. The petitioner was duly filed. The parties appeared before this court on 26th January 2011. The petitioner was represented by Mr. Wawire. The court granted the parties to file further affidavits.

The court fixed the application for hearing on 15th February 2011. On that day, Mr. Wawire, unlike the previous time he appeared before the court, told the court that he was holding brief for Mr. Wamae. Miss Mburugu, counsel for the objector informed the court that she was ready to proceed with the case. Mr. Wawire requested the court to grant an adjournment on the ground that it was Mr. Wamae who was seized with instructions to act on behalf of the petitioner. The court noted that even if Mr. Wamae had attended court, the petitioner, contrary to the court's directions, had not filed any pleadings in opposition to the objector's application. Therefore, the application stood unopposed. The court declined to grant the application for adjournment sought by Mr. Wawire and ordered the parties to proceed with the hearing of the application. Mr. Wawire informed the court that he wished to withdraw from acting for the petitioner. He made this application after the court had heard submissions made by the objector. He did not make any argument in opposition to the application.

This ruling is therefore delivered on the basis of the application filed by the objector and the submissions made on his behalf by Miss. Mburugu. As stated earlier, the application is unopposed. The objector is essentially seeking orders of this court to enforce the order of the court that was issued on 25th July 2007 by Kubo J. The learned judge, inter alia, ordered the petitioner to pay the objector (on behalf of Kevin Kiongo Muhoro) the sum of Kshs.500,000/- from the deceased's estate for the purpose of providing for the maintenance of the said Kevin Kiongo Muhoro, whom the court established was a child of the deceased and therefore entitled to benefit from his estate. The petitioner did not comply with this order of the court hence the objector's application. The application is unopposed and is therefore allowed.

The petitioner is ordered to forthwith pay the objector the sum of Kshs.500,000/-. The said sum should be paid within fourteen (14) days of the petitioner being served with the extracted order of this court or in

default thereof, the objector be at liberty to execute against the petitioner to enforce the said order of this court. The objector shall have the cost of this application.

DATED AT NAIROBI THIS 25TH DAY OF FEBRUARY, 2011

L.KIMARU
JUDGE