



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**SUCCESSION CAUSE NO. 295 OF 2001**

**IN THE MATTER OF THE ESTATE OF JOSEPH MUTUANJAU NGURU (DECEASED)**

**DANIEL MWANGI MURIITHI.....PETITIONER**

**RULING**

**DANIEL MWANGI MURIITHI**, the applicant herein, took out a chamber summons dated 7<sup>th</sup> December 2010 in which he sought for the following orders:

- 1. That limited grant of letters of Administration in the estate of BURTON MURAGE MURIITHI MUTUANJAU (Deceased) who died on 30<sup>th</sup> April 2004 be granted to the applicant DANIEL MWANGI MURIITHI herein to enable him prepare succession cause No. 295 of 2001 at Nyeri in the estate of MUTUANJAU NGURU ALIAS JOSEPH MUTUANJAU NGURU (Deceased) where he was the 2<sup>nd</sup> petitioner.***
- 2. That the costs of the application be in the cause.***

He swore an affidavit in support of the Summons.

It is the submission of the applicant that Burton Murage Muriithi Mutuanjau with one Wangui Mutuanjau had jointly applied for a grant of letters of administration intestate in respect of the Estate of Mutuanjau Nguru alias Joseph Mutuanjau Nguru, deceased in their capacities as son and widow of the deceased. The Applicant avers that Burton Murage Muriithi Mutuanjau died before he was granted the letters of administration. There is no evidence as what happened to Wangui Mutuanjau. I have considered the material placed fore this court. The Applicant seeks for limited letters of administration in respect of the Estate of Burton Murage Muriithi Mutuanjau using the file relating to the Estate of Mutuanjau Nguru alias Joseph Mutuanjau Nguru, deceased. That is not possible in law. The law did not envisage a situation where one succession file could be used to deal with more than one Estate. Further more a careful perusal of the material placed before this court will reveal that the late Burton Murage Muriithi Mutuanjau and Wangui Mutuanjau had filed Nyeri **S.R.M SUCC. CAUSE NO. 235 of 1986** to succeed the late Mutuanjau s/o Nguro alias Joseph Mutuanjau Nguru, deceased. It would appear that succession was transferred to the High Court Nyeri and given a new file number i.e. **NYERI H.C. SUCC. CAUSE NO. 295 OF 2001**. It is obvious the two files are in respect of the Estate of Mutuanjau Nguru alias Joseph Mutuanjau Nguru, deceased. No orders can be issued in the same file affecting the Estate of Burton Murage Muriithi Mutuanjau, deceased. The application dated 7<sup>th</sup> December 2010 is therefore improperly before this court. Further even if the application was properly before this court, I doubt whether the orders can be issued pursuant to the provisions of *Section 70* of the law of Succession Act. I order that the application be struck out.

***Dated and delivered at Nyeri this 25<sup>th</sup> day of March 2011.***

**J. K. SERGON  
JUDGE**

In open court in the absence of the Applicant but with notice.

