



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**P & A CAUSE NO. 49 OF 2004**

**IN THE MATTER OF THE ESTATE OF  
PHILIP JOSEPH FUCHAKA WECHULI ..... DECEASED**

**AND**

**IN THE MATTER OF PETITION BY  
PERTONILLAH MUHONJA MBAKAYA ..... 1<sup>ST</sup> APPLICANT  
WYCLIFFE ONGOYA WECHULI ..... 2<sup>ND</sup> APPLICANT**

**RULING**

This application has been brought under section 73 of the Probate and Administration Rules. It is by the 2<sup>nd</sup> applicant, **Wycliffe Ongoya Wechuli**, and it is for one main order of the Court that three documents filed with the petition for a grant of representation be subjected to documentation examination to authenticate whether or not the 2<sup>nd</sup> applicant (hereinafter “**the applicant**”) signed them. The questioned documents are:-

- (a) The affidavit of justification of proposed administrator sworn on 4<sup>th</sup> February, 2004.
- (b) The affidavit in support of petition for letters of administration intestate sworn on 4<sup>th</sup> February, 2004.

There is secondary prayer for an order releasing the said documents to the 2<sup>nd</sup> applicant’s advocate for onward transmission to a document examiner. The grounds of the application are, as stated in body of the Summons, that the signatures on the said documents do not belong to the applicant; that the said signatures are forgeries; that it is necessary that the signatures be authenticated and that the examination of the said documents is necessary for the just determination of the application for annulment of rant.

There has also been filed, in support of the application, an affidavit sworn by the applicant. He depones, *inter alia*, that he never signed the said documents and that it is necessary and imperative that the document examiner tests the authenticity of the said signatures on the said documents.

The application is opposed on the basis of a replying affidavit sworn by **Pertronillah Muhonja Mbakaya** (hereinafter “**the respondent**”). She has deponed, *inter alia*, that the application is intended to delay speedy disposal of the matter as the said documents were signed before a Commissioner for oaths.

In his submissions, counsel for the applicant contends that the examination of the said documents will resolve the issue of their authenticity given the challenge raised against them by the applicant. On behalf of the respondent, it is submitted that the application is not made in good faith but is designed to frustrate

the respondent who has young children to care for.

I have considered the application, the affidavits filed and the submissions of counsel. Having done so, I take the following view of the matter. These proceedings were commenced by way of a petition filed in the name of the applicant and the respondent. The Chief's letter dated 24<sup>th</sup> October, 2003 introduced the applicant as a son of the deceased and the respondent as the deceased's widow.

The relationship between the applicant and the respondent with the deceased does not appear to be in dispute. There is therefore no serious challenge on who ranks in priority with regard to the administration of the deceased's estate. The appointment of an administrator to a deceased's intestate estate is in the discretion of the Court. That discretion can be exercised without the involvement of a document examiner. In my view, reference of any documents to a document examiner will unnecessarily delay disposal of this cause, which should have been finalized by now. It is also significant that the applicant does not seem to have made any complaint with the police regarding the impugned documents.

In the premises, I find and hold that the reference sought will serve no useful purpose but will impede speedy administration of the deceased's estate. That being my view of the matter, I have come to the conclusion that the application dated 18<sup>th</sup> September, 2009 is without merit. I dismiss it with no order as to costs.

It is so ordered.

**DATED AND DELIVERED AT ELDROET THIS  
25<sup>TH</sup> DAY OF JULY 2011.**

**F. AZANGALALA  
JUDGE**

**Read in the presence of:-**

1. **Mr. Omusundi** holding brief for **Andambi** for the petitioner.

**F. AZANGALALA  
JUDGE.**