



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 561 OF 2008

IN THE MATTER OF THE ESTATE OF PETERSON NJOGU WARUI

AND

TERESA GATHONI

NJOGU.....PETITIONER

VERSUS

MARGARET MWIHAKI

NJOGU.....OBJECTOR

RULING

Margaret Mwihaki, the applicant herein, took out the summons dated 12th October 2010 pursuant to the provisions of section 26 of the law of succession Act whereupon she applied for the following orders:

- a. The grant of representation to the Estate of the above named PETERSON NJOGU WARUI who died on the 5th day of April the years 2003 having not been confirmed such reasonable provision be now made for the applicant as dependant of the deceased out of his net Estate as the Court deems fit.*
- b. That payment of Tea Bonus due to the Estate for parcel number OTHAYA/IHURIRIO/412 be stopped pending hearing of this application.*
- c. That the proceeds of tea bonuses due to the deceased's estate for he year 2010 which is due I*

October 2010 be shared equally as between he applicant and respondent

d. That costs of the application be provided for.

The applicant filed the affidavit she swore in support of the summons. Teresia Gathoni Njogu, the Respondent herein opposed the summons by filing a replying affidavit she swore on 2nd February 2011.

The applicant applied to be given reasonable provision as a dependant before the grant is confirmed out of the deceased's net estate. The applicant averred that the Respondent who is her co-administratrix has been benefiting from the annual proceeds of tea bonus harvested from L.R. no. Othaya/Ihuririo/412, rental income from Ihuririo market no. 28 and the pension scheme of the deceased. The applicant urged this court to order that the bonus expected to be paid in the month of October 2010 be shared in equal measure between her and the Respondent. She also proposed that the rental income and the pension be preserved in an account pending the hearing and determination of the succession cause. The Respondent on her part pointed out that the applicant's application is overtaken by events in that the anticipated payments have already been made. The Respondent further stated that the tea bonus is in respect of the tea from her parcel which she has always tended. She also argued that she personally developed plot no. 28 Ihuririo which she is still constructing upto date.

I have considered the rival submissions. There is no dispute that both the Applicant and Respondent are widows of Njogu Warui, deceased. A temporary grant of letters of administration was made in the joint names of the Applicant and the Respondent on 27th January 2009. Margaret Mwihaki Njogu, the Respondent herein, has applied for the grant to be confirmed. Teresia Gathoni Njogu has filed an affidavit of protest to oppose the summons for confirmation of grant. In my humble opinion I find the current application to be curious because it would appear none of the parties is ready to proceed with the hearing of the substantive matter. I say so, because, had the parties proceeded with the hearing of the summons for confirmation of grant plus the protest, the orders being sought now could have been determined a long time ago. The record shows that directions on how the hearing should proceed were given on 2nd October 2009. I doubt whether the Applicant was serious when she proceeded for hearing of the summons dated 12th October 2010 while she knew prayers (b) and (c) of the summons had been overtaken by events in that the event sought to be stopped had already taken place. The orders sought in my view can only be made at the conclusion of the matter. The same cannot be granted in an interim basis. If the applicant was serious in seeking for the order, then her remedy lies elsewhere but not through this application.

I find the summons to be premature and unjustified. The same is ordered dismissed with costs abiding by the outcome of the summons for confirmation of grant and the protest.

Dated and delivered this 15th day of July 2011.

J.K. SERGON

JUDGE

In open court Kinuthia h/b Muhoho for the Objector and Ombongi h/b Maina Karingithi for the Petitioner.

J.K. SERGON

JUDGE