



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
SUCCESSION CAUSE NO. 490 OF 2009

IN THE MATTER OF THE ESTATE OF
REBECCA MUTHONI WAHOME..... DECEASED
AND
PATRICK MBOGO WAHOME
ALICE WANJIRA NJOROGE
FESTUS GATHERU WAHOME
MARY WAITHIEGENI WAHOME..... PETITIONERS

VERSUS

WACHIURI WAHOME
JACKSON KINYORI WAHOME
JOHN NDURA WAHOMEOBJECTORS

R U L I N G

This ruling is the outcome of the Notice of Motion dated 14th February 2011 in which Wachiuri Wahome, being one of the objectors has applied for the following orders:

- 1. *That this honourable court do order the transfer of Nyeri Succession Cause No. 490 of 2009 between Patrick Mbogo Wahome, Alice Wanjira Njoroge, Festus Gatheru Wahome, Mary Waithiegeni Wahome versus Wachiuri Wahome, Jackson Kinyori Wahome, John Ndura Wahome to the Chief Justice of the High Court of Kenya at Nairobi for directions and or to be transferred to another judge.***
- 2. *That cost of this application be provided for.***

The motion is supported by the affidavit of the objector. The motion is opposed by the petitioners who filed the replying affidavit of Patrick Mbogo Wahome sworn on 25th February 2011. The objector also filed a further affidavit to respond to the replying affidavit.

It is the contention of the objector that the objectors may not get a fair hearing of this dispute before this court hence the court should recuse itself. The objectors pointed out that they had filed an application seeking to have Alice Wanjira Njoroge and Patrick Mbogo Wahome found guilty of concealment from court of some assets and for filing a false inventory of the assets. It is said when the application came up for hearing on 7th May 2010 this court struck out the application after it was opposed. The objector alleged that the court directed them to file written submissions to raise the issues. The objector further argued that Mr. Muchiri, learned advocate for the Respondents successfully made a verbal application to

reinstate the application. It is said that this court delivered a ruling on 7th October 2010 which dealt with the substantive issues which should have been reserved for the main judgment. It is alleged that the Respondents' advocate tactfully made the oral application to revive the already struck out application to give the judge an opportunity to make certain rulings which will be relied later in the main judgment. The objector further alleged that they suspect that there were underhand deals which their rivals may be undertaking to influence the outcome of the case. Mr. Wachiuri Wahome felt that the court became hostile to him when he made inquiries for directions on the way forward in this dispute. He also alleged that the objectors were not given adequate time to state their case by the court. For the above reasons, they feel they will not get a fair treatment before the court. Mr. Muchiri learned advocate for the Respondents opposed the motion. The learned advocate, however conceded that the court committed an error. He admitted that the Respondents had failed to point out to the court that the application dated 23rd April 2010 was still pending. Mr. Muchiri further argued that had the court been informed that the aforesaid application had been struck out, revived and dismissed again, it would not have dealt with it twice. The Respondents' advocate stated that it was a genuine mistake on his part.

I have carefully considered the rival submissions. The main prayer in the motion is that this court should disqualify itself and forward the file to another judge. The objectors are of the view that the court may be biased against them. I think the issue which has made the objectors to feel insecure is the fact that this court dealt twice with the application dated 23rd April 2010. It is admitted by the Respondents that the mistake occurred because of their failure to inform the court about the issue. After a careful consideration of the matter I have come to the conclusion that there is a sense of betrayal of the court by the Respondents. Questions are lingering in my mind as to whether or not the alleged omission on the part of the Respondents was a genuine mistake. If I continue handling this matter I may form a negative opinion on the part of the Respondents in view of their conduct in this dispute. Of course it has come out clearly that the court was misled hence the element of bias on the part of the court does not arise. I will recuse myself from this matter on the basis that there is a likelihood of me forming a negative opinion of the Respondents for concealing certain material facts from me. I hereby disqualify myself from further handling this matter. It is fortunate that we now have a second judge posted to this court. I direct that this matter be placed before the Honourable Mr. Justice James Wakiaga for hearing and determination.

Dated and delivered this 23rd day of September 2011.

J.K. SERGON
JUDGE

In open court in the presence of Muchiri for the Petitioner.

J.K. SERGON
JUDGE