

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 178 of 2008

IN THE MATTER OF ESTATE OF DAVID MURIUKI KABERERE (DECEASED)

ANNE WAITHERERO MURIUKITHE PETITIONER

versus

ANN GATHONI THUKU.....THE OBJECTOR

RULING

Following my ruling in this cause on 4/6/2009, ANNE WAITHERERO MURIUKI, who has preferred an appeal against my decision, is back to court seeking an order to stay (sic) my order in which I found that ANN GATHONI THUKU had a right to be named as an administrator of the estate of the late DAVID MURIUKI KABERERE, with whom she had cohabited as man and wife. Anne also seeks an order to stay further proceedings herein, and in both instances she prays that if granted the orders be issued pending the hearing and determination of her appeal.

Though the applicant claims to have filed her Notice of appeal on 13/3/2009, which was long before I delivered the contentious ruling, she did not attach a copy of the notice and in the circumstances her application is bound to fail for lack want of an appeal, which is required of an applicant in an application of this nature.

The application is however opposed on the grounds that if the orders are granted there will be continued wanton wastage of the estate, and she relies on the grounds that unless the orders which she seeks are granted her appeal stands to be rendered nugatory as the estate will have been distributed and most likely disposed of to 3rd parties.

I have considered the application and in my mind the issue of transfer to third parties does not hold any water for no transfers can take effect as the Grant has yet to issue after which it must be confirmed, in any event, her counsel informed the court that all the assets which comprise the estate are fully preserved.

All in all I find that this applicant who has failed to demonstrate that she has an appeal on the records cannot otherwise qualify for the orders which she seeks.

I dismiss her application with costs.

Dated and delivered at Nairobi this 6th day of August 2009.

JEANNE GACHECHE

Judge

Delivered in the presence of:

For the applicant – Mr. Omulele holding brief for Mr. Mutunga

For the respondent – No appearance