

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Civil Appeal 34 of 1997

ESTHER WANJIRU TWARA APPELLANT

VERSUS

MACHARIA MURAGE RESPONDENT

(Being an appeal against the decision of E.B. Ochieng DR in Resident Magistrate's Succession Cause No. 226 of 1984 at Nyeri)

JUDGMENT

On the death of Thwara Wahome, Macharia Murage petitioned for the grant of letters of administration intestate. On 29th February 1988 an application was filed by Esther Wanjiru Kola. That application was allowed by consent whereby she was allowed to file her objection to making grant within 14 days. That consent was recorded on 29th February 1988. She did not file the objection within that time. She later filed an application for extension of time to file the objection which was dated 24th October 1988. The court on 27th October 1988 dismissed her application. The grant issued to the petitioner was confirmed on 5th October 1990. An appeal has been filed in this matter by a person called Esther Wanjiru Thwara. As it can very clearly be seen the said appellant is not the party that was before the lower court during the hearing of the application for extension to file objection. What is not clear is whether Esther Wanjiru Thwara and Esther Wanjiru Kola are the one and the same person. On that basis alone that this appeal has been filed by a party who did not participate in the lower court matter this appeal will fail. It is further not clear against which decision of the lower court this appeal is based upon. In that regard I quote from the Memorandum of Appeal which states, “(Appeal against decision of Resident Magistrate’s Court Nyeri in RM’s Succession Cause No. 226 of 1994 Nyeri)”. From that statement I am unable to determine whether the appellant is appealing against the decision of 27th October 1989 which refused her prayer of extension of time to raise an objection, or the order of 5th October 1990 confirming the grant. On that basis also this appeal fails. Thirdly, an appeal on a succession matter does not lie as of right. It is necessary for leave of court to be obtained before the appeal is filed. The appellant did not prove such leave was granted and accordingly the appeal would fail for having being filed without leave. It is incompetent. For the reasons stated herein this appeal is hereby dismissed with costs to the respondent.

Dated and delivered at Nyeri this 8th day of October 2008.

MARY KASANGO

JUDGE