

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 921 of 2004

IN THE MATTER OF THE ESTATE OF GEORGE NJOROGE MAGURU (DECEASED)

JOHN MAGURU NJOROGE

FREDRICK MBURU NJOROGE.....APPELLANTS

VERSUS

ANNE WAIRIMU NJOROGE.....RESPONDENT

JUDGMENT

This matter came up for hearing before me on 27.06.07. Learned counsel, Mr J.N. Mbutia told the court that he was appearing for the applicant/objector while there was no appearance for petitioner. Mr. Mbutia informed this court that Mr Karuga Wandai was on record for the petitioner, that he was served with the court papers on this matter on 19.02.07 and acknowledged receipt but had not appeared at the hearing for unexplained reasons. Mr Mbutia also informed this court that directions had been given. Previously for this matter to proceed by way of *viva voce* evidence and that he wished to proceed with the hearing. This court was shown a copy of hearing notice for 27.06.07 which bore on its face a rubber stamp of Karuga Wandai & Co. Advocates of P.O. Box 1641, Thika with an endorsement 'Received on 19th February, 2007'. On the basis of the foregoing, the court directed that the hearing should proceed and it did.

Mr Mbutia then informed the court that what was coming up for hearing was summons dated 01.04.04 and on the basis of the foregoing he proceeded to call his only witness, John Maguru Njoroge who testified as objector witness (O.W.) 1. Thereafter Mr Mbutia closed his case.

I have now perused the court record. The summons dated 01.04.04 on the basis of which the hearing proceeded cites John Maguru Njoroge and Fredrick Mburu Njoroge as "Appellants" and Anne Wairimu Njoroge as 'Respondent'. The summons is, however, for revocation of a grant issued by Thika Chief Magistrates Court under Succession Cause No.172 'A' of 2003 to Anne Wairimu Njoroge, described as respondent herein, on 04.09.03. The parties who filed the summons dated 01.04.04 in the High Court are described as "Appellants". No legal provision was cited as the basis of the summons dated 01.04.04. The question then arises: Is the matter before this court an appeal and, if so, brought under what legal provision or provisions? Or is the matter before the court an application for revocation as the pleading entitled 'Summons for Revocation of Grant' implies? If the latter, under what provision or provisions of the law is it brought? The court has been left to speculate on the aforesaid matters. That is not the way to conduct this type of litigation.

I hold that this court has not been properly moved, that the application before court is incompetent and the same is hereby struck out. Costs shall be in the cause.

Orders accordingly.

Delivered at Nairobi this 13th day of November, 2007.

B.P. KUBO

JUDGE