

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Succession Cause 522 of 2001

IN THE MATTER OF THE ESTATE OF KAMAU WANDAKA
ALIAS GODFFREY KAMAU WANDAKA (DECEASED)

EVALYNE WAGITIE KAMAU.....1ST APPLICANT/OBJECTOR

ROSEMARY NYAMBURA KAMAU.....2ND APPLICANT/OBJECTOR

VERSUS

JANE WANJIRU KAMAU.....RESPONDENT/ADMINISTRATOR

RULING

Before me is a summons by dependants dated 7th April 2005 and filed by L.M. Kinuthia & Associates on behalf of the objectors EVALYNE WAGITIE KAMAU and ROSEMARY NYAMBURA KAMAU. It seeks for orders that as no grant of letters of administration to the estate of the late KAMAU WANDAKA alias GODFFREY KAMAU WANDAKA had been confirmed, reasonable provision be made for the applicants as dependants of the deceased out of the net estate as the court thinks fit. It also seeks that costs be provided for.

The application has grounds on the face of the summons and is supported by the affidavit of EVALYNE WAGITIE KAMAU sworn on 7th April 2005.

The application is opposed. A replying affidavit sworn by JANE WANJIRU KAMAU the respondent on 20th June 2005 was filed. A further affidavit sworn by the same JANE WANJIRU KAMAU on 22nd June 2006 was filed.

When the application came for hearing before me on 19th July 2006, both Mr. Kinuthia for the applicant and Mr. Mwigigi Kinuthia for the respondent addressed me. Counsel for the applicant informed me that some of the issues in the application were dealt with in the ruling of Justice Koome delivered on 3/2/2006. Counsel for the respondent informed me that the application was overtaken by events in view of Justice Koome's ruling.

I have considered the application and submissions of counsel for the parties. The application was filed, On 8/4/2005. Thereafter Hon. Justice Koome made a ruling in this Succession Cause on 3/2/2006. That ruling was in respect of an application for revocation of grant dated 5th June 2002. In that ruling, the Judge made a distribution of an asset in the succession cause, that is land Loc. 15/Kimathe/477 to the dependants. The effect of that was to vary the will, which was said not to have provided adequately for some dependants including the 1st applicant herein EVALYNE WAGITIE KAMAU. She was given an additional one acre of land. The 2nd applicant Rosemary Nyambura was also given one acre.

In my humble view, the decision of the court made on 3/2/2006 amounted to giving reasonable provisions for the dependants. Therefore this application was overtaken by events.

If any of the beneficiaries consider that the provisions made by the court for beneficiaries in the ruling of 3/2/2006 is not adequate, then the only avenue is to challenge that decision, not pursuing existing applications whose effect would be to challenge that decision. The applicants should probably have been advised to withdraw this application after the decision of the court issued on 2/3/2006. However, as they decided to pursue it and have it heard, I have to make a decision on it.

As I have said above, the application was overtaken by events in view of the court's ruling of 3/2/2006 and cannot succeed. I have to dismiss the same.

For the above reasons, I dismiss the application. As this is a family matter, I order that each party will bear the costs of the application.

Dated and delivered at Nairobi this 27th day of September 2006.

George Dulu

Ag. Judge

In the presence of –