



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**SUCCESSION CAUSE NO 1146 OF 1997**

**IN THE MATTER OF THE ESTATE OF STEPHENSON  
JOB CHEGE KIMOTHO (DECEASED)**

**MARY WAMBUI CHEGE ..... APPLICANT**

**VERSUS**

**HAMIDA BANA as the next friend to**

**JALEEL CHEGE (Minor) ..... 1ST RESPONDENT**

**PETER GITAHU ..... 2ND RESPONDENT**

**MRS. MARY WAMBUI CHEGE ..... 3RD RESPONDENT**

**KENYA COMMERCIAL BANK LTD ..... 4TH RESPONDENT**

**RULING**

In this application dated 17th September, 2002, and brought under Order 44, Civil Procedure Rules, and Rules 49, 63 and 73, Probate and Administration Rules, the Applicant seeks to review and set aside two Orders of this Court: One, a Consent Order dated 24th February, 2000 declaring Jaleel Chege a dependant of the late Stevenson Job Chege (hereinafter “the deceased”) and second, the Ruling and Order of this Court declaring Peter Gitahi, a dependant of the deceased. The Applicant says that she is one of the beneficiaries of the Estate of the deceased, and that she was neither served with the application leading to the aforesaid Orders of this Court nor did she consent to the same. She argued that she was denied the opportunity to represent her interests, and that the said orders adversely affect her interests.

The issue is: Should she have been served with the Court documents? Is her consent necessary? Mr Sayende, Counsel for the Applicant, relied on Order 30 Rule 1 of the Civil Procedure Rules as his authority for the proposition that the Applicant beneficiary ought to have been consulted with regard to the entry of the two Orders aforesaid.

This is what Order 30 Rule 1 says:

***“In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit, but the court may, if it thinks fit, order them or any of them to be made parties”.***

The above Order is clear in what it says. It certainly does not impose any obligation upon the executors to consult, serve court documents upon, and obtain consents from the beneficiaries. It is an unfair and unrealistic expectation for them to do so.

The executors and administrators of the Estate are duty bound to represent the interests of all the beneficiaries. That is their function. They did so in this case. There is nothing to show that they have acted improperly or unlawfully, and in a manner inconsistent with their mandate and duty. They had every authority to enter into the Consent Order with respect to Jaleel Chege. As for Peter Gitahi, his application to be declared a dependant of the deceased was heard on its merit by this Court. It has nothing to do with the rights, adverse or otherwise, of the Applicant. It has all to do with his own rights, which are independent of the rights, if any, of the Applicant.

Accordingly, for those reasons I see no merit in the Applicant's application dated 17th September, 2002 and dismiss the same with costs to all the Respondents.

I would also dismiss this application for one other additional reason – that it has not been made without unreasonable delay. Order 44 Rule 1 requires that application for review be made “without unreasonable delay”. This application was made two years after the Orders were made. It is also instructive to note that it was prosecuted after another two years of its being filed. All this inordinate delay has not been explained. It is grossly unfair to all the Respondents. For that reason too, this application is dismissed with costs.

Dated and delivered at Nairobi this 18th day of May, 2005.

**ALNASHIR VISRAM**

**JUDGE**