



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI.
SUCCESSION CAUSE NO. 692 OF 1994.

**IN THE MATTER OF THE ESTATE OF BENJAMIN GICHEHA
(DECEASED)**

TIMOTHY B. GICHEHA.....1ST APPLICANT

EUSTACE KIARIE.....2ND APPLICANT

VERSUS

PERPETUAL WANJIRU KANYOKO.....RESPONDENT

RULING

The petitioner in this cause, Perpetual Wanjiru Kanyoko applied by way of summons under Rules 5 and 73 of a P&A Rules for orders.

1. That the application dated 23rd December, 1999 by Timothy Gicheha Muiruri and Eustace Kiarie be dismissed and or be expunged from the record.
2. Secondly, the costs of the application be provided for.

The application is supported by the affidavit of Perpetual Wanjiru Kanyoro. The application is grounded on the fact that the respondent has since filing the application dated 23/12/1999 failed to take the necessary action to fix it for hearing despite several reminders to do so. The applicants attempted to fix the application for hearing but did not succeed as they were informed that the application does not conform to the prescribed format.

The applicant is the petitioner and executrix of the will of the deceased

and the grant of probate was confirmed on 13/8/1998. She is apprehensive that the witnesses she desires to call in support of her case are elderly and frail and it is necessary that the application should be finalized expeditiously and since the objectors have failed to take the necessary steps the application by them dated 23/12/1999 should be dismissed. The objector did not file any papers, they were represented by the firm of A.N.Ngunjiri represented by Miss Munene who stated that the objectors have not been in contact with their firm for the last two years and hence they had filed an application seeking for leave to withdraw from acting for them. She requested the court to allow them time to look for the objectors as it will be detrimental to them if their application is dismissed without their knowledge.

I have considered this application carefully within parameters of Rule 73 that gives this court inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

Parties which file their matters in court should take initiative of prosecuting the same. A party who has been sued in court is obviously kept under suspense and anxiety. The courts should not be used as a weapon of torture by some parties who want to harass others by taking them to court, I find the applicants who filed an action about 4 years ago, and they have not been in touch with their Advocates who are representing them for two years to have lost interest in the application.

Accordingly, the continued pendency of the application is an abuse of the process, and therefore grant the application dated 8/7/2003 with costs as prayed.

Ruling read and signed on 16/1/2003.

M. KOOME

16/1/2004

