



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 137 OF 2000

IN THE MATTER OF THE ESTATE OF GEORGE GITHIOMI NJOROGE

AND

ROSE WANGUI GITHIOMI APPLICANT

AND

LEAH WANGO'RE GITHIOMI 1ST RESPONDENT

NJOROGE GEORGE GITHIOMI 2ND RESPONDENT

R U L I N G

In this summons dated 5th November 2001 the Applicant, Rose Wangui Githiomi is praying for orders

“1. That the monthly rents from deceased’s property Ref. Nairobi LR 209/91/25 now collected by the Respondents be entrusted with an agent appointed by court for collection and preservation, for distribution after final determination of this cause.”

The two Respondents are Leah Wangore Githiomi and Njoroge George Githiomi. The summons is brought under Section 45 of the Law of Succession Act as read with Rule 73 of the Probate and Administration Act. It is opposed by the two Respondents who have filed a replying affidavit to that effect. Mr. Paul Muira is representing the Applicant while Miss Ndirangu is representing the Respondents.

Both, Rose Wangui Githiomi and Leah Wangore Githiomi, claim to have been married to the deceased, George Githiomi Njoroge, each lady not recognizing the marriage of the other to the deceased person. After the deceased had died, Rose Wangui Githiomi, the Applicant before me now, filed a petition for the grant of letters of administration to the estate of the deceased. That was in the case file before me being Succession Cause No. 137 of 2000.

The Respondents filed an objection to the grant and cross petitioned.

The Objection, the cross petition and the petition remain pending all having been filed after the Applicant, Rose Wangui Githiomi, had filed, in the Civil Cases Division of this court, HCCC No. 38 of 2000 asking for a permanent injunction against the Respondents. That Civil Case is also still pending. But that was not all as the Respondents came to this Division and petitioned for the grant of letters of administration ad Colligenda bona in Succession Cause No. 2402 of 2001 despite the fact that they were aware of the pendency of HCCC No. 38 of 2000 and H.C. Succession Cause 137 of 2000. Succession Cause No. 2402 of 2001 was subsequently consolidated with this Succession Cause and latter withdrawn leaving this Succession Cause to proceed.

Although the Respondents filed their answer to petition for grant, their objection and their cross petition on 17th March 2000, there is no explanation why up to 29th October 2001, no hearing of the petition and cross petition had taken place. I mention 29th October 2001 because that is the date when the parties in this matter first appeared before me and serious effort to move forward for the hearing of the petition and cross petition attempted the parties appearing not so keen to quickly make a definite step forward. It was not surprising, therefore, that as we persisted pushing forward towards the hearing of the petition and the cross petition, the Applicant came in to file this summons dated 5th November 2001 seeking the orders I have already referred to.

To my mind, that summons dated 5th November 2001 and filed on 20th November 2001 is an attempt by the Applicant to pull the hearing of the petition and the cross petition back to a zero step because once the court begins granting the collection and preservation order in respect of the property mentioned in prayer number one of the summons dated 5th November 2001, there will be no good reason why the court will not continue making similar orders in respect of the rest of the assets in the estate of the deceased which orders will not only complicate but may also confuse this succession cause resulting into an indefinite pendency of the hearing and determination of the important Petition and Cross petition.

As I will not encourage that type of summons, this summons dated 5th November 2001 before me now be and is hereby dismissed with costs to the Respondents.

Dated this 24th day of May 2002.

J.M. KHAMONI

JUDGE