



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO. 2194 OF 2001**  
**IN THE MATTER OF THE ESTATE OF WANJIRU NDUNGU**  
(Deceased)

PAUL WAWERU KINUHI ..... APPLICANT

VERSUS

JOHN NDUNGU NJOROGE ..... 1ST RESPONDENT

JANE MUMBI NDUNGU ..... 2ND RESPONDENT

**R U L I N G**

From what has been brought to my attention during the hearing of this summons dated 23rd July 2002, the same be and is hereby dismissed with costs to the Respondents.

Reasons to be given latter

. Dated this 23rd Day of October 2002.

J.M. KHAMONI

JUDGE

REASONS FOR THE DECISION DATED 23-10-2002 On 23rd October 2002

after inter partes hearing of the Summons dated 23rd July 2002, I dismissed the said summons and stated I was to give my reasons latter. Mr. Kinuthia Wandaka was the Advocate for the Applicant while Mr. Mwangi Chege was the Advocate for the Respondents. I now give the aforesaid reasons:

Ruth Wanjiru Ndungu, the Deceased in this matter died on 12th April 2001 while giving birth to a child who survived her at Nazareth Hospital in Kiambu District. On 12th September 2001 her two parents John Ndungu Njoroge and Jane Mumbi Ndungu jointly petitioned this court for a grant of letters of administration intestate under the provisions of the Law of Succession Act (Cap. 160 Laws of Kenya). In that petition the two petitioners mentioned their respective names, and the name of the child whose birth resulted into the death of the Deceased, as the only survivors of the Deceased and beneficiaries in the estate of the Deceased whose estate was said to consist of Insurance Policy with The Heritage A.I.I. Insurance Company Ltd and also a bank account. The name of the child was given as Collins Ndungu Wanjiru. Following the filing of that petition, this court issued a grant of letters of administration Intestate on 13th November 2001 to the two petitioners. On 12th April 2002 Paul Waweru Kinuhi filed a caveat under Rule 15 of the Probate and Administration Rules and thereafter waited until 23rd August 2002 to file this summons dated 23rd July 2002. Apparently the filing and service of the said caveat and summons

have affected further proceedings by the petitioners as the application for confirmation of the grant herein has not been filed to-date.

In the summons the Applicant, Paul Waweru Kinuhi is praying that the two petitioners, now co-Administrators or Co- Respondents in this summons, be ordered to deposit the sum of Kshs 700,000/- into court or an interest bearing account pending the hearing and determination of this matter. But when asked whether the Applicant has filed any other application apart from the caveat and this summons in this matter, the answer is in the negative. The Applicant however claims that he is entitled to the order prayed for because he was husband of the Deceased and that Heritage A.I.I. Insurance Company Ltd had informed him that the Deceased had nominated him to receive 50% of her dues from that Insurance Company on account of her Insurance policy.

The Respondents have opposed the summons pointing out that the Deceased was not married to anybody, including the Applicant, and that as a result when the Deceased died, it was the Respondents who collected her body, plus the infant she had left, from the hospital and buried the deceased and remained in custody of the infant who they are bringing up without seeing any concern from the Applicant who had not even claimed the body of the Deceased.

The Applicant has not produced evidence to rebut the evidence of the Respondents. Nothing to show that he had indeed married the Deceased under any law in Kenya. Nothing credible shows that he was entitled to 50% or any other percentage of proceeds from the Insurance Company or even to show that the Insurance Company gave him the information that he had been nominated to receive 50% of the proceeds.

More than one year since the death of the Deceased and six months since the caveat was filed yet to-date the Applicant had never petitioned the court for a grant or filed an objection to the Respondent's petition or an answer to petition or an application by way of cross-petition. When he says in prayer two of his summons that the money be deposited "pending the Hearing and determination this matter" God knows what else, after determination of this summons, the Applicant is still having in this matter to be determined.

As things stand to-day, even if the Applicant were entitled to the money he claims or any part thereof; since he has not filed an objection to the petition or any other lawful protest to the grant of letters of administration in this matter, the Applicant becomes an outsider not lawfully entitled to the order he is asking this court to grant to-day. For what I have said above therefore, I dismissed the Applicant's summons herein dated 23rd July 2002.

Dated at Nairobi this 24th Day of October 2002.

J.M. KHAMONI

JUDGE