

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 251 OF 1988
IN THE MATTER OF THE ESTATE OF KARIUKI KAMAU
(DECEASED)

1. LEAH WANJIKU

2. LEAH NYAGAKI

3. ESTHER GITHIGA APPLICANTS

VERSUS

FRASIA WANJIKU KARIUKI EXECUTOR/RESPONDENT

R U L I N G

Although in this summons dated 19th September 2002 the Respondent, Frasia Wanjiku Kariuki, was served and has failed to come up to oppose the application requiring rectification or amendment of the certificate of confirmation and although the Applicants Leah Wanjiku, Leah Nyagaki and Esther Githiga claim that they had never litigated against the Administrator Frasia Wanjiku Kariuki before, I find, from my perusal of this case file and from what the Applicants have told me that the Applicants brought a similar claim desiring revocation of grant on the basis that there was no valid Will.

They lost. At that time Leah Wanjiku had teamed up with the late Margaret Wambui Kariuki who was the mother of Leah Nyagaki and Esther Githigu who seem to have been married at that time. Leah Wanjiku and Margaret Wambui Kariuki lost the case as can be seen in the judgment of J.F. Shields J. dated 23rd June 1993. The decision was not that they share the estate as the applicants before me now claim. There was no appeal against that judgment and Frasia Wanjiku Kariuki therefore went a head to administer the estate in accordance with that Will.

Leah Wanjiku is not therefore entitled, in law, to come back to this court to make the claim she is making. Similarly Leah Nyagaki and Esther Githigu are not entitled because they are litigating under their mother who, like Leah Wanjiku, should not come back to this court, if she were alive, to make the claim her daughters are making. "The matter is res judicata.

Accordingly the summons dated 19th September 2002 be and is hereby dismissed.

Dated this 14th Day of October 2002.

J.M. KHAMONI

JUDGE