



REPUBLIC OF KENYA



In re Estate of the Late Eunice Wanjiru Nyoro (Deceased) (Succession Cause 838 of 2011) [2024] KEHC 10914 (KLR) (Family) (19 September 2024) (Ruling)

Neutral citation: [2024] KEHC 10914 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 838 OF 2011

HK CHEMITEI, J

SEPTEMBER 19, 2024

IN THE MATTER OF THE ESTATE OF THE LATE EUNICE WANJIRU NYORO (DECEASED)

BETWEEN

BENSON KARANJA NYORO 1ST OBJECTOR

HENRY KANGETHE NYORO 2ND OBJECTOR

RAHAB NJOKI GICHERI 3RD OBJECTOR

MERCY MUTHONI 4TH OBJECTOR

AND

ESTHER WANGUI NYORO PETITIONER

RULING

1. On 24th October 2023 when this matter was due for hearing, neither the Applicants nor their advocates were present in court. The counsel for the Respondent requested the court to have the objection proceedings dismissed for they had been granted a last adjournment. The court agreed with the said sentiments and dismissed the objection proceedings dated 7th February 2022 and 31st March 2023 respectively.
2. The Applicants have filed two sets of applications seeking to set aside the said orders. The first application by the 1st 2nd and 3rd Applicants dated 9th November 2023 seeks the following order:-
 - (a) That this court be pleased to set aside the orders made on 24th October 2023 dismissing the 1st 2nd and 3rd Objector's Applicant's objection for non-attendance and all the other consequential orders.



3. The application is supported by the sworn affidavit of Gabriel Waweru Wanjau counsel for the applicants which was sworn on the same date.
4. The second application is by the 4th Objector Mercy Muthoni and it is dated 11th November 2023 seeking orders tha:-
 - (a) This court be pleased to issue orders reinstating the 4th objector's objection dated 31st March 2023 together with the supporting affidavit sworn on 31st March 2023.
5. The application is based on the sworn affidavit of Seth Ojienda counsel for the applicant dated the same date.
6. The Respondent Esther Wangui Nyoro has opposed the said applications vide her sworn affidavit dated 30th January 2024.
7. One Amy Sironka the daughter to the Respondent and an advocate has well has supported the position taken by the Respondent in opposing the two applications.
8. The gist of the applications is that the two counsels on record failed to attend court on the material day because they suddenly got engaged elsewhere when the matter was called out.
9. Mr Seth Ojienda for instance stated that he was unable to join the court due to some technicalities only to be informed later that the objection proceedings had been dismissed.
10. Gabriel Waweru Wanjau on his part gave chronology of events including the fact that because of the age of his clients he directed them to sit in the next courtroom. That he stepped out to take a call only to come back and be told that the matter had been dismissed.

The Respondent's long affidavit in my view sets the record straight. None of the Applicants were in court even for a moment. Had they been in court I doubt whether the court would have dismissed their case.
11. I have seen the submissions of all the parties. It is true that the Applicants have caused delay in this matter. The court has given them various adjournments which culminated into the dismissal of the objection proceedings.
12. In this instance it appears to me that the blame squarely rest with the advocates. Was it a design that both counsels would be absent on the material day? Why even if counsel Waweru was absent Mr Ojienda failed to log in? Or is it a question of blaming technology?
13. Whatever it is I think the counsels on record have to shoulder the blame. I say so because none of the parties dared to swear any affidavit for obvious reasons, that they were not in court.
14. However, for the above reasons I think this court will not chase the litigants from the seat of justice. This being a family matter the court will give them another chance. The court will not shift the burden to them but to their advocates whom as found above are squarely culpable.
15. However, they have to meet the costs of reinstating the matter. As stated above there is no plausible reason to allow the application save for the discretion of this court.
16. In the premises the court directs as hereunder:-
 - (a) The applications dated November 9, 2023 and November 11, 2023 are allowed and the orders dismissing the objections herein dated October 24, 2023 are set aside.



- (b) Both counsels for the applicants, that is the firm of Nyamu J & Company Advocates and Ojienda & Company Advocates shall each within 30 days from the date herein pay to the Respondent a sum of Kshs 50,000 thus totalling Kshs 100,000 and in default the same shall be recovered as a debt.
- (c) The orders of last adjournment against the Applicants shall still stand and this matter be fixed for hearing forthwith.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 19TH DAY OF SEPTEMBER 2024.

H K CHEMITEI

JUDGE

