



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MURANG'A

SUCCESSION CAUSE NO. 122 OF 2015

RE ESTATE OF CEPHAS KIHANYA NATHAN (DECEASED)

STEPHEN NGONJO KIHANYA

SAMUEL NDIRANGU KIHANYA

JANE WANJIKU MUCHENE

JACINTA WANJIRU.....APPLICANTS

VERSUS

IRENE WANJIRU KIHANYA.....PETITIONER/RESPONDENT

RULING

1. The preliminary issue is whether the firm of *Ochoki & Ochoki Associates* should be granted *leave* to come on the record for the four applicants.
2. The Notice of Motion is dated 26th July 2020 and predicated on a deposition sworn by Jane Wanjiru Muchene on 26th August 2020. There are additional prayers for *revocation* of the grant issued on 27th July 2015 and for an *account* of rent.
3. The motion is opposed through a replying affidavit sworn by Irene Wanjiru Kihanya on 11th September 2020.
4. In the interests of time, I directed learned counsel for the parties to first address the court on the question representation.
5. I have considered the rival submissions. The record shows that on 29th March 2019, the Court (*Waweru J*) rendered a decision intitled "Judgment". The applicants thus take the view that their present counsel requires leave to come on the record after judgment. The respondent on the other hand opines that the decision of *Waweru J* was not a final decree but a preliminary finding.
6. I think the respondent is splitting hairs. What was before *Waweru J* was a summons for revocation of the grant dated 29th October 2015. In a considered judgment, he found that the respondent was the sole surviving spouse of the deceased and was entitled to administer the estate. The summons was *dismissed*. However, the court left open the question of *distribution* of the estate.
7. Whether the summons was dismissed by a ruling or judgment is mere tautology. I concur fully on that point with *Wanjiru Karanja J* (as she then was) in *Naomi Wanjiku Mwangi v Grace Njeri Thathi*, High Court, Embu, Civil Case No. 87 of 2006 [2011] eKLR.
8. The point to be made is that the main issue for determination before *Waweru J* was whether the grant should have been revoked and the learned judge made a final finding on that issue. It was thus proper to title the determination as *judgment* notwithstanding that the question of distribution of the estate was left for further hearing.
9. Prior to that judgment, two of the applicants, Jacinta Wanjiru and Samuel Ndirangu, were represented by the firm of *Ransley McVicker Shaw Advocates*. By a notice of appointment dated 15th August 2019 the two other applicants, Jane Wanjiku Muchene and Stephen Ngonjo Kihanya, appointed the firm of *C.B. Keya Company* in the matter.
10. The firm of *Ochoki & Ochoki Associates* has not filed or served a notice of change of advocates on the two firms. Instead, the firm chose

to move the court for leave to come on record after judgment.

11. From a close reading of Rules 8, 9, 60 and 63 of the ***Probate and Administration Rules***, it remains doubtful that Order 9 of the ***Civil Procedure Rules*** on change of advocates after decree applies strictly in succession proceedings. I am also alive to the provisions of Article 159 of the **Constitution** which exhorts the court to do substantive justice to all the parties

12. Nevertheless, common sense, decency and good order dictate that the incoming lawyers should serve the lawyers of record with this type of motion. At the time of hearing the present motion, there was no evidence on the record of service upon the previous lawyers.

13. Until the firm of *Ochoki & Ochoki Associates* files a suitable notice of change of advocates with service on all their predecessors, the firm is *not* properly on the record. The present chamber summons praying for leave to come onto the record is redundant and is struck out with no orders on costs.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 2nd day of March 2021.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of:

Mr. Sausi for the objectors/applicants instructed by Ochoki & Ochoki Associates Advocates.

Mr. Kang'iri holding brief for Mr. Koech for the administrator/respondent instructed by Harit Sheth Advocates.

Ms. Dorcas Waichuhi & Ms. Susan Waiganjo, Court Assistants.