

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAJIADO

SUCCESSION CAUSE NO. 3 OF 2019

IN THE MATTER OF THE ESTATE OF AMOS MUHURI KORIA (DECEASED)

RULING

I took over the proceedings in this matter on 2nd November 2021. On that day, the Protestor Caroline Elizabeth Wanjiru Gicheha, was recalled to the witness stand for re-examination by her counsel. After her testimony, Zakky Ng'ang'a Gicheha, her father testified after which Mr. Waweru, who represented the Protestor together with Mr. Muiruri, sought an adjournment to another day to enable him call one witness who was not able to attend court on 2nd November 2021. He also sought witness summons to issue for the Chief of Olchoro-Onyore Location to attend court when court convenes next time. The reason for this application was given that the said Chief had issued two letters on the same date to the Petitioner and the Protestor in these proceedings both letters were to the effect that each was a wife of the deceased and that both letters are part of these proceedings.

This application was opposed by Mr. Gitange for the Petitioner. His reasons for the opposition is that the matter has been delayed by the counsel for the Protestor. Mr. Gitange asked the court to mark this as the last adjournment by the Protestor. Further, Mr. Gitange opposed issuance of witness summons to the Chief. He submitted that this is a civil matter relating to marriage and that chiefs do not participate in traditional marriages. He submitted that by issuing witness summons this court will be aiding the Protestor to bring witnesses to court and that the Chief has not written a witness statement. He submitted that this court gave its directions on 6th November 2019 that this matter should proceed by *viva voce* evidence but counsel for the Protestor did not take action but waited to be assisted by the court in bringing witnesses to court. He said there are no issues in respect to the letter by the Chief. He stated that similar application to issue witness summons was made before Justice Chacha earlier but the Judge declined to grant it and further that on 29th September 2021, the court gave specific directions for parties to exchange witness statements. The door to call further witnesses closed at that time.

In response, Mr. Waweru told the court that there is nothing unprocedural in issuing witness summons to a witness who is crucial in the interest of justice to assist the court in rendering justice. He stated that this is a court of justice and should render substantive justice. He stated that there is no order on record declining to issue witness summons.

I have read the court file, though with difficulty since the proceedings have not been typed. I have seen the proceedings on the issue of adjournments. I have however not seen anything on record to do with summons to the Chief in issue and the court order declining to grant that prayer. I have seen the orders of 29th September 2020. The proceedings of that day do not mention anything about witness summons.

I have considered this matter, I differ with Mr. Gitange in the view that by allowing an application by a party to summon witnesses, the court would be aiding that party in his/her case in bringing a witness to court. It is my view that for the sake of justice any witness whose evidence is vital to a case ought to testify for ends of justice to be met. This court was told that the Chief sought to be summoned issued two letters to the two women, both issued on the same day and both identifying them as wives of the deceased. Whether both are wives of the deceased is a central issue in these proceedings. The letters from the chief to the two women are relevant to this case. As pointed out, they are part of the evidence to be tendered by both women. In the interest of justice I will allow the application. Witness summons are hereby issued to the Chief of Olchoro-Onyore Location to attend court when this matter comes for hearing next.

On the issue of the last adjournment, I have noted that some delay in finalizing the matter was caused by the Protestor and her counsel as they sorted out representation issues. There is also the Covid Pandemic that grounded the operations of the court. I will therefore allow an adjournment to another date. I will not make it a last adjournment for the Protestor but I will keep a keen eye on her and her counsel to ensure that this matter does not get adjourned unnecessarily on their behest. Those are the orders of this court.

Dated, signed and delivered this 10th November 2021.

S. N. MUTUKU

JUDGE