



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 1866 OF 1998

IN THE MATTER OF THE ESTATE OF KAMUYU NJIRI - (DECEASED)

NG'ANG'A KIROGO NJIRI.....APPLICANT/OBJECTOR

-VERSUS-

KABUI WA HIUHU.....ADMINISTRATOR/1<sup>ST</sup> RESPONDENT

LUCY WAMBUI KIBATHA...ADMINISTRATOR/2<sup>ND</sup> RESPONDENT

RULING

1. In the application dated 12<sup>th</sup> November 2018 the applicant Ng'ang'a Kirogo Njiri sought that the joint grant issued to the respondents Kabui Wa Hiuhu and Lucy Wambui Kibatha be revoked and or cancelled. The application was substantially made under **section 76(a) (b) and (c) of the Law of Succession (Cap 160)**. This application followed the judgment delivered by this court on 10<sup>th</sup> May 2019. In the judgment, the court declared that the deceased Kamuyu Njiri was married to Agnes Wambui; that he had taken in the two children of Agnes Wambui (the respondents) as his own, and that they were therefore his dependants; that the grant issued to the former administrator Joseph Chege Waigwa followed false statements and were therefore revoked; that the orders of 2<sup>nd</sup> July 2020 were set aside and cancelled; all transactions stemming from the orders of 2<sup>nd</sup> July 2001 were nullified; and that a fresh joint grant be issued to the respondents who would apply for confirmation.

2. The grant was subsequently confirmed on 16<sup>th</sup> December 2019.

3. The applicant's application shows that he was aggrieved by the judgment. This is because he still insists that the deceased died intestate, was never married and left no family. It is his case that the persons who were entitled to inherit the deceased were his siblings, him included. He stated that the respondents ought not to have been appointed as the administrators of the estate of the deceased.

4. I agree with the respondents that the applicant is raising matters that were determined following a substantive hearing. The deceased's siblings had taken the position, and given evidence, that he had died without a wife or child. The respondents testified and called evidence to establish otherwise. The court exercised its discretion and appointed the respondents as administrators.

5. **Section 7 of the Civil Procedure Act** provides that:-

**“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”**

6. This court is barred from rehearing matters that were already heard and determined as between the parties by a court of competent jurisdiction (**Re Estate of Laurent Ntirampeba (Deceased) [2019]eKLR**).

7. The preliminary objection dated 24<sup>th</sup> May 2021 stated in paragraph 4 that the issues raised by the applicant had already been determined by the court through the judgment delivered on 10<sup>th</sup> May 2019; that the issues being raised in the application were *res-judicata*. I accept that the point raised through the objection is a pure point of law. It has been successfully taken and should bring the matter to an end (**Mukisa Biscuits Manufacturing Ltd –v- West End Distributors Ltd [1969]EA 696**).

8. The objection is sustained with costs, and the application struck off with costs.

**DATED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 8TH NOVEMBER 2021.**

**A.O. MUCHELULE**

**JUDGE**