



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

(FAMILY DIVISION)

SUCCESSION CAUSE NO 1106 OF 2007

IN THE MATTER OF THE ESTATE PETER KIONI WARUGONGO (DECEASED)

LOISE NYAWIRA KIONI.....1ST APPLICANT

GRACE WAMBUI MUTHUMBI.....2ND APPLICANT

LEAH WAMUYU KIONI.....3RD APPLICANT

ESTHER MWIYERIA KIONI.....4TH APPLICANT

NANCY WANGUI.....5TH APPLICANT

VERUS

SAMUEL WARUGONGO KIONI.....1ST RESPONDNT

JEREMIAH NG'AYU KIONI.....2ND RESPONDNT

PAUL NDIRANGU KIONI.....3RD RESPONDNT

R U L I N G

1. In the application dated 2nd April 2019, **Loise Nyawira Kioni, Grace Wambui Muthumbi, Leah Wamuyu Kioni, Esther Mwiyeria Kioni and Nancy Wangui** describing themselves as daughters of the deceased and naming their brothers, **Samuel Warugongo Kioni, Jeremiah Ng'ayu Kioni and Paul Ndirangu Kioni** as respondents sought for order injunctiong the Respondents from dealing with property Title Number **Nakuru/Municipality Block 10/47**, to have the grant issued on 5th November, 2008 revoked and inclusion of **Nakuru/Municipality Block 10/47** as part of the estate.

2. The above application attracted a replying affidavit and a notice of Preliminary Objection from the respondents both dated 17th May 2019.

3. This ruling relates to the Preliminary Objection which sought to have the application struck out on grounds that:

- The applicants have no *locus standi* to bring the application as they are not representatives of the estate;
- The Court has no jurisdiction to allow the orders sought for;
- Succession court is functus officio;
- The applicants are estopped from bringing the application as they previously participated in the matter;
- The matter is resjudicata; and
- Any litigation involving the estate now ought to be filed in the Environment and Land Court.

4. A Preliminary Objection must be raised only on matters of law. If a court is referred to matters that require evidence then the preliminary objection must fail.

5. Further, **Section 47** of the **Law of Succession Act** provides as follows:

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decree and make such orders therein as may be expedient (emphasize added).

Section 76 on the other hand provides **that:**

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own wish.....” (emphasize added)

Rule 73 of the Probate and Administration Rules provide that:

“Nothing in these Rules shall limit or otherwise affect

the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of court.”

6. In our jurisdiction succession matters are highly immotive and many a times not concluded over several years due to various reasons, some mischievous, other fraudulently etc. and as if alive to this fact the Law of Succession Act is most likely the most liberal piece of legislation we have, in that no time limit is given to when one may make an application and any person who has an interest may apply to court. The court mandated to entertain any application or dispute arising therefrom.

7. Therefore I am of the view that the Preliminary Objection raised is not confined to matters of law secondly due to the nature of the matter and the law applicable to these proceedings the same must fail.

8. It is dismissed with costs.

Dated and Delivered in Nairobi on this 16TH day of January, 2020

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ALI-ARONI

JUDGE