



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 121 OF 1993

IN THE MATTTTER OF THE ESTATE OF CRISPIN WAHOME NDEGWA (DCD)

FRANCIS JAMES NDEGWA.....PETITIONER/PROTESTER

VERSUS

1. ELIZABETH NJERI WAHOME

2. MARY WANJIRU WAHOME

3. MARY WAMBUI WAHOME

4. ANGELICA WANGUI WAHOME

5. LUCY WANJIKU WAHOME

6. CATHERINE WANJA WAHOME.....RESPONDENTS

RULING

This ruling is delivered in rather unfamiliar and unprecedented circumstances. The entire world has been hit by a respiratory disease known as COVID-19 or corona virus. It is viral in nature spreading mainly through human contact although, lately, it has been suggested that it could be airborne as well. So far, it has no known cure but its spread can be contained if human contact or interactions can be restricted. Measures have been taken the world over towards this end in what is now popularly referred to as ‘social distancing’. It is for this reason that this ruling is, with the consent of the parties, sent to them through their email addresses. They are at liberty to obtain a signed copy at the court’s Probate and Administration registry.

By a summons in general form dated 10 October 2018, the applicant prayed in the main for the setting aside of this court’s ruling dated 4 October 2018 and stay of execution pending the hearing and determination of his appeal, apparently against the said ruling. The application is supported by the applicant’s own affidavit in which he complains that the impugned ruling was erroneous because it “retained the names of Samuel Kahunyo Muturi and excluded the names of Paul Muturi Wanjau and Geoffrey Wanjau Muturi”. In any event, there is a civil application No. 63 of 2016, apparently in the Court of Appeal over the same issue.

The respondents opposed the summons and in their joint affidavit sworn on 10 May 2019 they contend that all that the applicant has filed in the court of appeal is an application for leave to appeal out of time; in other words, there is no appeal against the impugned ruling.

The record shows that this cause was concluded way back in 2016, more specifically on 18 March 2016 when I delivered a judgment the effect of which was to distribute the deceased’s estate amongst his children.

By rulings of this honourable court respectively dated 21 April, 2017 and 6 July 2018, the question of substitution of the parties the applicant appears to be complaining about was disposed of. His application is nothing more than a regurgitation of issues that have either been disposed of in those two rulings or in the court’s judgment of 18 March 2016. On that ground alone this application ought to fail.

Even then, although the application is based on the legal ground that there is an appeal against a ruling by this court, there is no such appeal that has been filed. All that has been filed is an application for leave to file the appeal out of time. Thus, the ground upon which the application is based is non-existent.

In any event, I cannot fathom how the applicant would be seeking to set aside a ruling in this court and at the same time be appealing against

it.

My reading of this application is that it is calculated to delay the completion of the administration of the deceased's estate. It is therefore made in bad faith and for this reason I have no alternative but to dismiss it with costs to the respondents. Orders accordingly.

Signed, dated and delivered this 9th day of April, 2020

Ngaah Jairus

JUDGE