



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

(FAMILY DIVISION)

SUCCESSION CAUSE NO 1257 OF 2000

IN THE MATTER OF THE ESTATE OF GICHUHI GATHUNGA (DECEASED)

ALICE NJOKI GICHUHI.....PETITIONER

VERSUS

TABITHA GATHONI GACHAGWI.....1ST OBJECTOR

PETER GICHUHI MWANIKI.....2ND OBJECTOR

WILSON GICHUHI GACHAGWI.....3RD OBJECTOR

R U L I N G

1. The application subject of this ruling is dated 25th of February 2019 and seeks various orders as follows:

- a) That the firm of Kinyua Mwaniki & Wainaina Advocates be allowed to come on record on behalf of the 1st and 3rd Objectors in place of M/s. Kibatia Advocates.
- b) That the 1st and 3rd Objectors be granted leave to appeal against the judgment and orders issued on 14th February 2019.
- c) That the court do enlarge time to file the appeal out of time.
- d) Orders of the court be stayed pending determination of the intended appeal.
- e) Costs abide the outcome of the appeal.

2. The application is premised on the grounds that the 1st and 3rd Objectors intend to appeal, the against the judgment; they require leave to appeal, application has been brought without delay; and no prejudice will be suffered by the Respondents.

3. The application is supported by the affidavit of the 1st Objector with the authority of the 3rd, the 2nd Objector is since deceased.

4. The reasons for the intended appeal are given as:

- That the court did not give the administrators and beneficiaries an opportunity to agree on mode of distribution.
- Without any application the court proceeded to distribute properties Lari/Bathi/129 and Lari/Bathi/T.110.

5. The application is opposed by way of a replying affidavit of Alice Njoki Gichuhi the Petitioner/Respondent. She states that the grant was not revoked as such but partially altered; the firm of Kinyua Mwaniki and Wainaina Advocates are not properly on record as no consent by the law firm of M/s. Kibatia has been filed; leave should be denied due to age of the file; the judgment was fair; the application has no merit and if the court allows stay of execution then the 1st and 3rd Objectors should comply with orders set in the judgment, Alice Gichuhi to occupy 2.2 of Lari/Bathi/129 and Peter Gichuhi 1. Acre and a survey ought to be done.

6. The parameters for excising the discretion of the High Court in granting leave to appeal in succession matters were well set out in the

case of **Rhoda Wairimu Kioi and John Kioi Karanja vs Mary Wangui Karanja and Salome Njeri Karanja Civil Appeal Nai 69 of 2004** where the Court of Appeal stated as follows:

“We think we have said enough to demonstrate that under the law of succession Act there is no express automatic right of Appeal to the Court of Appeal that an appeal will lie to the Court of Appeal from the decision of the High Court, exercising original jurisdiction with leave from the High Court or where the application is refused with leave of this court. Leave to appeal will normally be granted where prima facie it appears that there are grounds which merit serious judicial consideration. We think this is a good practice that ought to be retained in order to promote finality and expedition in determination of probate and administration disputes....”

7. Having considered the application and respond thereto and the facts of this case.

a. I allow prayer 2 of the application.

b. I do not however find that the applicants have persuaded this court to exercise its discretion in their favour as they have not demonstrated any grounds that merit serious judicial determination in the Court of Appeal.

Secondly this matter has been in court for the last 19 years the deceased having died 59 years ago and the same needs to be brought to a finality.

8. Prayers 3, 4 and 5 are therefore allowed.

9. Costs to the Petitioner/Respondent.

Dated and Delivered in Nairobi on this 2nd day of May, 2019

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ALI-ARONI

JUDGE