



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1728 OF 2000

IN THE MATTER OF THE ESTATE OF MWANGI KIMANGA (DECEASED)

ALICE WANJIKU MWANGI.....1ST APPLICANT

MARY WAIHERA KIMANGA.....2ND APPLICANT

JANE WAMAITHA KIMANGA.....3RD APPLICANT

VERSUS

PRISCA WANJIKU KIMANGA.....1ST RESPONDENT

STEPHEN MAINA KIMANGA.....2ND RESPONDENT

AND

GERALD IRUNGU.....1ST INTERESTED PARTY

ALICE WANJIRU.....2ND INTERESTED PARTY

RULING

1. The applicants Alice Wanjiku Mwangi, Mary Waithera Kimanga and Jane Wamaitha Kimanga and the interested parties Gerald Irungu and Alice Wanjiru filed this motion dated 8th March 2016 seeking various orders. They included the order directing the executors of the Will of the deceased Mwangi Kimanga to immediately petition for the grant of probate within 14 days or such time as the court may direct; in default, an order appointing a reputable estate management company to take over, collect, preserve and manage the estate of the deceased so as to avoid any wastage and/or loss to the assets; in the interim, the management company to make reasonable provision for the upkeep of the applicants; and, that Patrick Githinji Mwangi be cited for contempt and sentenced to serve 6 months in jail for disobeying the court orders granted on 11th December 2015. The supporting affidavit was sworn by the 1st applicant who said she was a widow of deceased. Her case was that following the revocation of the grant of letters of administration intestate that had been issued to the respondents Prisca Wanjiku Kimanga and Stephen Maina Kimanga the executors under the Will of the deceased were directed to immediately petition for the grant of probate to enable the applicants file the necessary objection. The executors, she stated, had

failed to petition for the grant of probate, hence the present application. The executors of the Will were the deceased's sons Stephen Maina Kimanga (2nd respondent) and Fredrick Njora Mwangi, nephew Paul Kimari Mwangi and brother Jotham Githinji. In this application, it was alleged that one Patrick Githinji Mwangi had without any colour or right and in derogation of the orders purported to take over the shares of the deceased in Kirima Bus Service Ltd and become a director in the firm. The shares, it was stated, were part of the estate of the deceased. It was sought that an order issues restraining the said Patrick Githinji Mwangi from taking over, transferring, seeking, disposing or in any other manner dealing with the shares of the deceased in the company, and an order declaring the entire process leading to his taking over the shares as being unlawful and of no consequence.

2. The application was opposed by the respondents filing grounds of opposition and the 2nd respondent filing a replying affidavit. Their case was that, following the revocation of the grant, they had lodged a notice of appeal in the Court of Appeal. Realising that they needed leave of the High Court to file the appeal, they had applied for leave. A ruling was delivered on 17th June 2016 granting leave to appeal. However, the request for stay of the orders of this court was declined. The respondents then filed an appeal challenging the judgment of this court revoking the grant. On 23rd August 2016 they filed an application for stay of the execution of the orders of 11th December 2015. The application is pending before the Court of Appeal. According to their written submissions that application is scheduled for hearing on 20th March 2017.

3. Basically, the respondents were saying that the distribution of the estate of the deceased was done in accordance with his written Will. They were the ones who had on 15th August 2000 successfully petitioned the court for the grant of letters of administration intestate. They had gone ahead to distribute the estate. The applicants had successfully got the grant revoked on the ground that the respondents had petitioned on the basis that the deceased had died intestate when, in fact, he had left a written Will. The respondents asked the court to hold its hand in the matter until the appeal had been heard and determined. They also urged the court to consider that neither Patrick Githinji Mwangi nor Kirima Bus Company Ltd were parties in this Cause and therefore no orders can be issued against them.

4. I agree that Patrick Githinji Mwangi and Kirima Bus Company Ltd were not parties in this Cause, and were therefore not heard in the matter. No orders can legally issue against either of them without being afforded a hearing.

5. The grievance of the applicants and interested parties is that the 2nd respondents and fellow executors of the Will of the deceased have failed and/or refused to file petition for the grant of probate. The proper procedure is for the applicants and the interested parties to take out a citation against the executors in terms of **rules 21 and 22** of the **Probate and Administration Rules** of the **Law of Succession Act (Cap 160)**. For failure to follow this procedure, the application is refused. I make no order as to costs.

DATED and DELIVERED at NAIROBI this 18TH JANUARY 2017

A.O. MUCHELULE

JUDGE