

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 758 OF 2011

IN THE MATTER OF THE ESTATE OF GODFREY MWEKA NGARU (DECEASED)

(CONSOLIDATED WITH HCSCS NOS. 363, 757 AND 1472 OF 2011)

RULING

1. On 22nd July 2015, Kimaru J. delivered a ruling herein where the will allegedly made by the deceased was invalidated and it was ordered that the estate be dealt with as if the deceased had died intestate. Subsequent to that ruling, the parties hereto filed several applications. The first in time is a summons dated 28th October 2015 filed by William Muthama Mweka. It seeks several orders – injunctions, deposit of rental income in joint accounts, appointment of joint property managers, distribution of income among the beneficiaries, accounts, among others.

2. The next in line is a Motion dated 16th December 2015, brought at the instance of Marina Centra Ndinguri. It seeks leave for counsel to come on record, for stay of proceedings and for review of the orders made by Kimaru J. on 22nd July 2015. Marina Centra Ndinguri followed that up with an application dated 8th February 2016, seeking various injunctive orders against William Muthama Mweka, stay of the proceedings herein pending appeal and for separation of the assets of the estate of the deceased herein and of the deceased in HCSC No. 363 of 2011.

3. On 26th May 2016, William Muthama Mweka filed a summons, of even date, seeking that the grants issued in respect of the grants of representation made in the causes of Godfrey Mweka Ngaru and Zipporah Wanjiru Mweka be nullified or revoked, and that a joint grant be made in respect of the two estates to named individuals.

4. Directions have been given on diverse dates on the disposal of the pending applications. The first directions were given on 23rd November 2015 by Muigai J. It was ordered that the three causes be consolidated and that thereafter the parties do identify the assets constituting the estates of the deceased persons, their acreage and where they were located and thereafter work on a mode of distribution. It was further directed that the application dated 28th October 2015 be disposed first. On 22nd March 2016 Muigai J. granted a prayer in the application filed in court on 12th February 2016.

5. The matter was placed before me on 27th July 2016. The parties were in agreement that the application dated 8th February 2016 could be disposed of by way of written submissions. Directions were thereafter given along those lines. When the matter came up before me again on 31st January 2017, the parties appeared to have changed positions. Whereas there was agreement on 27th July 2016 that the application dated 8th February 2016 could be disposed of first and directions were given based on that understanding, Mr. Abidha and Mr. Mworira insisted that their respective applications be heard first.

6. The parties herein have, with respect adopted a very eclectic approach to the matter. Directions were given by Muigai J on 23rd November 2015 that the application dated 28th October 2015 be disposed of first. However, when the parties appeared before me on 27th July 2016 none of them mentioned the application dated 28th October 2015, instead they only focused on that dated 8th February 2016 and appeared in total agreement on its disposal. The matter was thereafter mentioned on 20th September 2016 to confirm filing of submissions on the application dated 8th February 2016. The issues that were raised

before me on 31st January 2017 were not raised on 20th September 2016. The parties have since complied with the directions of 27th July 2016 by filing submissions on the application dated 8th February 2016.

7. Directions had already given on the applications to be disposed of first. Ideally, that dated 28th October 2015 ought to have gone first, however the parties by their own agreement or understanding on 27th July 2016 opted to have that dated 8th February 2016 heard first. They have filed written submissions with respect thereto. I will not allow them to blow hot and cold. The application dated 8th February 2016 shall be determined first based on the submissions already on record. The other applications shall be dealt with thereafter.

8. As the parties have already filed submissions on the application dated 8th February 2016, I shall proceed to prepare a ruling thereon, to be delivered on a date to be given at the taking of these directions.

DATED, SIGNED and DELIVERED at NAIROBI this 3RD DAY OF FEBRUARY, 2017 .

W. MUSYOKA

JUDGE