

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 464 OF 2004

IN THE MATTER OF THE ESTATE OF PHILIP WAHOME (DECEASED)

RULING

1. The summons dated 6th July 2016 seeks, in the main, that the summons herein dated 22nd June 2016 be stayed pending hearing and determination of another summons of even date filed in HC Commercial Case No. 617 of 2012 (OS). The application is at the instance of one Francis Mburu, who is not a survivor of the deceased or a beneficiary under the estate, but a director of companies that are litigating with the estate in HC Commercial Case No. 617 of 2012 (OS). His case is that the two applications seek similar orders.

2. There is no written reply to the application by the respondent.

3. I directed, on 13th July 2016, that the application dated 6th July 2016 be argued ahead of that dated 22nd June 2016. That effectively disposed of prayer 2 of the said application. Counsel for both sides addressed me on 18th July 2016. I have noted the arguments made by both sides.

4. The application dated 22nd June 2016 and filed in HC Commercial Case No. 617 of 2012 (OS) is exhibited in the affidavit of the applicant in the instant application. I have compared the orders sought in the said application with those sought in the application filed herein on 22nd June 2016, of even date. The prayers sought in both applications are similar. Indeed the prayers sought in the application herein are a replica of the prayers sought in the application in HC Commercial Case No. 617 of 2012 (OS).

5. The application filed herein on 22nd June 2016 also seeks orders against persons who are neither survivors of the deceased nor beneficiaries of the estate. Ideally, claims against third parties are handled separately in civil proceedings properly brought by the estate, through the administrators, against the third parties. This is the process of collecting the estate. Gathering assets is not done through the succession cause, but through separate administration suits. I believe that the proper domain for the orders sought in this cause in the application dated 22nd June 2016 is HC Commercial Case No. 617 of 2012 (OS).

6. I find merit in the application dated 6th July 2016, and I hereby grant the same in the terms proposed in prayer 3 thereof. The applicant shall have the costs of the application.

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

W. MUSYOKA

JUDGE