

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 599 OF 1986

IN THE MATTER OF THE ESTATE OF ANDREW SAIKWA (DECEASED)

RULING

1. I have perused the record, and in particular the application dated 3rd May 2016, as well the submissions made this morning on which of the applications ought to be disposed of first.
2. I have noted that that application dated 11th May 2015 was partially heard. A ruling was delivered on 18th December 2015 disposing of prayer 2 thereof. Prayers 3 and 4 were to be argued later on a date to be obtained at the registry on priority.
3. The parties appeared before me on 26th January 2016 and agreed to have the said application disposed of by way of written submissions, to be filed on specified dates and to be highlighted.
4. The submissions were duly filed and were to be highlighted on 1st March 2016. On 1st March 2016 the submissions were not highlighted as some parties had not yet filed their submissions and prayed for more time. They also sought to be served with certain affidavits. The adjournment sought was allowed and the matter was stood over to 30th March 2016.
5. Come 30th March 2016 the submissions were not highlighted as one of the parties sought recusal of the presiding Judge on the grounds that he was intimately connected to the applicant's lead counsel, Prof. Lumumba. The party asked for three (3) days to obtain certain papers that would prove his case. The matter was taken out on 30th March 2016 and was stood over to 4th May 2016 to allow the said party get his documents.
6. It transpired that the trial Judge did not sit on 4th May 2016 and the parties obtained a date at the registry for mention on 11th May 2016.
7. When the matter came up for mention on 11th May 2016, one of the parties urged that they had filed an application for leave to cite certain parties for contempt of court and for stay of proceedings. It was urged that the said application ought to take priority over the earlier application.
8. I have considered all the issues raised by the parties. The application dated 11th May 2015 is partially heard. The remaining prayers were to be disposed of by way of written submissions, to be highlighted. The said written submissions have been filed and are on record. The submissions have not been highlighted on account of adjournments sought by the respondents on diverse grounds. Looking at the grounds raised so far I am inclined to hold that the same are flimsy and designed to derail the highlighting of the submissions.
9. I have carefully scrutinised the application for leave to bring contempt proceedings and for stay of proceedings. The said application is founded on facts and grounds that relate back to events of 2013. There is nothing new. It does not hinge on any new facts. I see nothing in it that would bar me from hearing the application dated 11th May 2015 and determining it. I have not been convinced that justice would be subverted if the said application is heard ahead of the contempt application.
10. This cause was initiated in 1986. It is a shame that it has not been concluded to date. It is in the

interests of justice that the litigation comes to an end. As the application dated 11th May 2015 is ripe for hearing, I shall proceed to hear it ahead B of any other. I direct that the same shall be heard, by way of the written submissions, being highlighted, on 12th May 2016 at 2.30pm.

11. Those are my directions.

DATED, SIGNED and DELIVERED at NAIROBI this 11TH DAY OF MAY, 2017.

W. MUSYOKA

JUDGE