



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
SUCCESSION CAUSE NUMBER 651 OF 2012
IN THE MATTER OF THE ESTATE OF SAMUEL WAINAINA MUIRURI

(DECEASED)

TERESIA WANJIKU WAINAINA.....1ST APPLICANT

MARTIN MUIRURI WAINAINA.....2ND APPLICANT

VERSUS

DORCAS NYOKABI WAINAINA.....1ST RESPONDENT

JULIUS KAMAU WAINAINA.....2ND RESPONDENT

EVA WANJIKU WAINAINA.....3RD RESPONDENT

RULING

On 12th October, 2016 the Advocates on record for the Respondents filed an application to withdraw from acting. The Respondent was served but she declined to attend Court.

On 22nd March, 2016 the Respondent did not attend Court and Witness Summons were issued for her attendance on 20th September, 2016. On that day despite service she did not attend Court. The application for the Advocates to cease acting was granted and the Respondent was granted opportunity to obtain legal representation.

Today, the matter was for the summons for confirmation application to be heard. The application was filed on 10th March, 2015 to confirm the grant of 6th February, 2015.

Before the same could be heard and determined various other applications and proceedings took place that culminated with the Ruling by Hon. Justice R. Ougo of 17th September, 2015 to wit that the parties desist from filing further applications and the matter be set down for hearing.

When the summons for confirmation application was heard today, the 1st family consented to list of beneficiaries, list of assets and proposed mode of distribution. The 2nd family objected to all the 3 categories. The Respondents stated that some of the assets are Companies and not available for distribution. Secondly, that the Respondent require time to obtain legal representation. Of concern is that

the Petitioners see this as a ploy to delay the hearing and determination of the suit. There have been numerous applications, the Respondents have not been attending Court and now continue to seek legal representation.

The Petitioners concern is that the 2nd family is hoarding all the properties of the deceased's estate to the prejudice and detriment of the 1st family that is languishing in poverty. It was alluded that the 2nd petitioner/beneficiary is destitute J W has no fixed abode. It was also alluded that E W W has not been able to pay for her education as ordered by the Ruling delivered by Hon. Justice L. Kimaru on 5th February, 2013.

Since the summons for confirmation hearing has been objected to by the Respondents and cannot be heard, the Respondents are entitled to file Protests to the summons for confirmation of grant. Secondly, they are entitled to legal representation. That will take time. This Court cannot shut its eyes to the plight of the 2 children of the deceased from the 1st family who are suffering and need funds from their late father's estate. Therefore, in the interim until the hearing of the summons for confirmation of grant; the Court orders as follows;

1. The protestors; Teresia Wanjiru Wainaina and Martin Muiruri Wainaina shall file and serve their protests for the summons for confirmation of grant of 9th March, 2015 within 14 days.
2. The said parties shall obtain legal representation for these proceedings.
3. The Deputy Registrar Family Division shall formally write to the Manager Barclays Bank of Kenya A/c [...] and Manager Standard Chartered Bank A/c [...] for payment as follows;
 - a) **Payment of school fees arrears upon production of the institution's fee structure to be paid directly with institution as per the Ruling of Hon. Justice Kimaru of 5th March, 2013 for Eva Wanjiru Wainaina and Hon. R. Ougo of 9th February, 2015.**
 - b) **to Dorcas Nyokabi Wainaina Kshs.100,000/= for the rent and up keep of J W.**
4. Further mention on 7th December, 2016 for further directions and the way forward.

DELIVERED, SIGNED & DATED AT NAIROBI THIS 10TH DAY OF NOVEMBER, 2016

M. W. MUIGAI

JUDGE