

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1184 OF 2012

IN THE MATTER OF THE ESTATE OF NAOMI NJAMBI KARIUKI (DECEASED)

RULING

1. This matter came up on 7th July 2014 for the hearing of the petition, objection and cross-petition. The objectors did not attend court although the date for hearing had been obtained at the registry by consent of both sides, I dismissed the objection and cross petition, and allowed the petition.
2. The objector has now come to court by an application dated 18th September 2014. He says the failure on his part to attend court on the appointed date was inadvertent, for he relied on the online cause list which did not mention the cause.
3. The executor contests the application. He argues that the date had been fixed by consent and the matter was properly listed, therefore there could be no plausible excuse for failing to attend court.
4. This is a family matter. The probate court is largely a court of equity. The inadvertence on the part of the objector can be cured, of course with compensation to the executor.
5. The orders that I am persuaded to make are:-
 - a. **That the grant of probate of written will made on 7th July 2014 is hereby suspended, so that it shall not be uttered anywhere by the executor until further orders of this court;**
 - b. **That the orders made on 7th July 2014 are hereby reviewed so that the objection, answer to the petition and the petition by way of cross-application are hereby reinstated;**
 - c. **That the objection proceedings shall be heard on dates to be given at the registry on priority; and**
 - d. **That the objector shall pay to the executor throwaway costs of Kshs. 5,000.00 within thirty (30) days.**

DATED, SIGNED and DELIVERED at NAIROBI this 2ND DAY OF OCTOBER, 2015.

W. MUSYOKA

JUDGE