



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Succession Cause 217 of 2011**

**IN THE MATTER OF THE ESTATE OF LOISE**

**WAIHERA MWANGI -(DECEASED)**

**JUDGEMENT**

When this matter came up for hearing on 4<sup>th</sup> February 2013, Mr. Gachomo for the objectors indicated that the same was coming up for the hearing of the application dated 15<sup>th</sup> July 2011. The record is peppered with references to the application dated 15<sup>th</sup> July 2011. Directions were even taken on 19<sup>th</sup> March 2012 on the disposal of the said application – by way of *viva voce* evidence.

I have perused the record and established that there is no application dated 15<sup>th</sup> July 2012. The court has been misled all this while that there is a pending application dated 15<sup>th</sup> July 2012. What is on record dated 15<sup>th</sup> July 2012 is a notice of objection to making a grant, made under rule 17(1) of the Probate and Administration Rules in Form 76, addressed to the Deputy Registrar. Such a notice does not amount to an application. It is just an notice that the person issuing it intends to file objection proceedings. A hearing cannot possibly be conducted on the strength of such a notice.

Where a notice is given to the Deputy Registrar under rule 17(1), it is the requirement under rule 17(5), that the Deputy Registrar should write to the objector asking him or her to file an answer to the petition on record and a petition by way of cross-application for a grant to be made to him. It is after the filing of these two documents that the matter ripens for full hearing. It is after the filing of these documents that directions are taken as to the mode of hearing. The objection proceedings are based on these two documents, together with the petition, but not on the notice filed under rule 17(1).

In this case, the objectors did not file answer to the petition, nor a cross-petition. The matter was therefore not ripe for hearing. The directions taken on 19<sup>th</sup> March 2012 were premature. The hearing therefore conducted on 4<sup>th</sup> February 2013 was a nullity as the correct procedure was not followed and there was no basis for conducting the hearing.

As it is the pendency of the alleged application dated 15<sup>th</sup> July 2012, which does not exist, which has delayed the making of the grant to the petitioners, I hereby direct that a grant of letters of administrators intestate be made to the petitioners, Fredrick Warui Mwangi and Erick Kariuki Mwangi, forthwith.

Its so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI this 7<sup>th</sup> DAY OF MARCH, 2013.**

**W.M. MUSYOKA**

**JUDGE**