



REPUBLIC OF KENYA
IN THE REPUBLIC OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. 257 OF 2012

BETTY RASHID.....APPLICANT

AND

COMMISSIONER OF POLICE.....1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION....2ND RESPONDENT

AND

BETH NYAMBURA MBURU.....INTERESTED PARTY

RULING/DIRECTIONS

1. The petitioner is an advocate of the High Court and in the course of her duties she alleges that she received the last will and testament of Samson Mburu Huho (deceased) for safe – keeping on or about 1st August 2011. She had been acting for the deceased in several other matters which are not of concern herein.
2. Upon his death, the petitioner states that she read the will to the family. Thereafter, disputes arose among family members as he was a polygamous man. The original will was filed in court for grant of probate through the firm of Kiagayu and Company Advocates in *Nairobi Succession Case No. 2586 of 2011*. No action has been taken in the matter to date.
3. Members of the family opposed to the will filed an application for grant of letters of administration intestate in *Succession Case No. 2649 of 2011*. This matter has seen a lot of litigation and will be mentioned in court on 29th April 2013.
4. In the meantime, George Ngugi Wanjiru, a son of the deceased was charged with the offence of forgery contrary to **section 350(1)** of the *Penal Code* for forgery of the deceased's will in Kibera Chief Magistrates Court *Criminal Case No. 26660 of 2012*. The case is now part-heard and is scheduled for further hearing in June 2012.
5. The petitioner is apprehensive that she will be charged together with the said George Ngugi Wanjiru and she seeks this court's protection. Mr Njogu, counsel for the 2nd respondent, contends that investigations are still ongoing and that no decision to charge her has been confirmed.

6. Although the Director of Public Prosecutions has a mandate to investigate and prosecute offences, I think this court cannot lose sight of the fact that the Estate of the deceased is a contested matter as there are two causes on the issue in the Family Division. In ***Succession Cause No. 2586 of 2011***, the Court is entitled to come to the conclusion that the deceased's will is not valid.

7 I take the position, that this matter should not be fought in forums other than the Family Division of the High Court.

8. In view of the foregoing and in order to assist the court conclusively and expeditiously resolve the matters surrounding the Estate of Samson Mburu Huho (deceased), I give the following Direction;

(i) The 2nd respondent is restrained from howsoever from investigating the conduct of the petitioner in so far as it concerns the last will and testament of Samson Mburu Hugo (deceased) pending such directions as shall be issued in ***HC Succession Case No. 2586 of 2011*** and ***HC Succession Case No. 2649 of 2011*** or further orders of the court.

(ii) This order shall be brought to the attention of the judge handling both succession cases.

(iii) ***HC Succession Cause No. 2586 of 2011*** shall be mentioned on 29th April 2013 together with ***Succession Cause No. 2649 of 2011*** for further directions and orders from that court.

(iv) The Parties are at liberty to apply for further or other orders.

DATED and DELIVERED at NAIROBI this 10th day of April 2013

D.S. MAJANJA

JUDGE

Mr Wamwayi instructed by Wamwayi and Company Advocates for the petitioner.

Mr Njogu, Prosecution Counsel, instructed by the Directorate of Public Prosecutions for the 2nd respondent.

Mr Kamau instructed by P.K. Kamau and Company Advocates for the interested party.