

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

SUCC CAUSE NO: 1538 OF 2010

IN THE MATTER OF THE ESTATE OF BONIFACE MWAURA WATURU – (DECEASED)

RULING

Boniface Mwaura Waturu died on 12th July 2009. Representation to his estate was sought by Eric Waturu Mwaura and David Kamau Waturu on 30th July 2010. The prayers lodged in court indicated that he was survived by four children – Scholar Nyakio, Victoria Wambui, Eric Waturu and Mary Wanjiru Mwaura.

The petition was not gazetted as a caveat was lodged in the cause on 21st December 2010 by M/s. Waithira Mwangi & Co. Advocates, on behalf of Joseph Mungai Mwaura. This was followed by an application by way of a summons general dated 30th May 2011 by the said Joseph Mungai Mwaura, seeking restraining orders and that the proceeds from the income generating assets be deposited in a joint interest earning account. This application was heard by Njagi J and preservatory orders granted on 3rd May 2012.

Joseph Mungai Mwaura filed another application on 11th July 2012. He seeks that he be appointed as joint administrator of the estate with Eric Waturu Mwaura. He argues that the estate is being wasted as there are no administrators in place. This application is strongly opposed by Eric Waturu Mwaura who has sworn an affidavit in reply, on 5th November 2012, filed in court on 10th December 2012.

The cause herein was filed on 30th July 2010. It has not been gazetted to date. The gazetting of the case will open the way for the lodging of objections to the grant being made to the petitioners, and it will give a platform to Joseph Mungai Mwaura to argue his case. It would appear that the processes which he has been filing herein, which in my view are misconceived, are informed by fact that he has not yet gotten the right opportunity to file a proper action. It is the non-gazetting of the cause which is causing all the trouble.

It would appear that the petitioners are to blame for the delay. There is a minute in the court record, by the Principal Deputy Registrar, made on 14th October 2010, which has not been acted on by the petitioners. The minute reads:

“-David to be indicated as beneficiary in P&A 5 if he is one, if not his relationship to the deceased is to be explained by the chief.

-Chief's letter is to be in the original.

-Status of deceased widow is to be

insecured.”

My understanding of the minute is that the status of the second petitioner, David Kamau Waturu, is not clear. In the petition, form P&A 80, the petitioners describe themselves as bringing the petition in their capacity as sons of the deceased. This would make David Kamau Waturu a surviving child of the deceased. Yet in the affidavit in support of the petition, form P&A 5, David Kamau Waturu is not listed as a survivor of the deceased. The letter from the Chief of Ngararia Location dated 27th August 2009 does not list him either among the children who survived the deceased. The other issue is that the Chief's

letter dated 27th August 2009 is a photocopy, the Principal Deputy Registrar has required that an original letter be filed. The issue of the widow should not arise as the Chief's letter indicates that she is also dead.

The matters raised by the Principal Deputy Registrar should be addressed so that the deadlock in the cause can be unlocked. I therefore hereby give the petitioners thirty (30) days to address the issues raised in the minute I have referred to. The matter shall be mentioned after thirty (30) days for further orders.

DATED, SIGNED and DELIVERED at NAIROBI this 5th DAY OF July, 2013.

W. M. MUSYOKA

JUDGE