

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

Succession Cause 241 of 2011

IN THE MATTER OF THE ESTATE OF SAMUEL NJAGI – DECEASED)

JANE MUTHONI NJAGI

GIBSON MUNYI NJAGIRESPONDENT/PETITIONER

VERSUS

FRIDAH WANJIKUAPPLICANT/OBJECTOR

RULING

The Petitioners, Jane Muthoni Njagi and Gibson Munyi Njagi were issued with a Grant of Letters of Administration on 5th August 2011. Thereafter, two applications were filed by Fridah Wanjiku who claimed to be a wife of the deceased Samuel Njagi Munyi (the deceased). This application is dated 23rd September 2011, and was filed on 29th September 2011 (**Fridah's application**). There was yet another application dated 24th April 2012, filed on 25th April 2012 by Achach & Company Advocates on behalf of Winfred Wambui Gathuma (**Winfred's application**).

Both Fridah and Winfred claimed in their applications that they were lawful wives of the deceased and were excluded from the Grant of Letters of Administration made to Jane Muthoni Njagi and Gibson Munyi Njagi (the Petitioners). Fridah and Winfred therefore claim that the Grant of Letters of Administration (the Grant) was obtained fraudulently by the Petitioners and ought to be revoked on that ground and the further ground that the Grant was obtained by fraudulent misrepresentation of material facts. These claims are reiterated both in the grounds and the Supporting Affidavits of Fridah and Winfred.

Counsel for the Petitioners took a Hearing Date for Fridah's application on 17th November 2011, and undertook to serve a Hearing Notice to the Advocates for Fridah, M/s Ogeto & Company Advocates for hearing on 23/02/2012. Though there is no Affidavit of Service on record, Fridah's Counsel were aware of the Hearing Date of 23/02/2012, and were represented by Mr. Otieno who informed the Court that they had not informed the Objector because they thought that the Petitioner's case would be heard first, and then the Objector's.

The Court consequently directed that the Objector would testify first, followed by the Petitioner. A hearing date of 14th June 2012 was given. However the firm of Achach & Company Advocates had on 1st December 2011 filed a Notice of Appointment of Advocates dated 1st December 2011, but no application appears to be on record. However from the Hon. Lady Justice Omondi's Order of 25th April 2012 ***"if the Letters have already been issued they cannot be stayed. I grant applicant leave to file an amended application and supporting affidavit"***, there was an application to stay the issue of the Grant.

Instead a new application dated 24th April 2012 was filed on 25th April 2012, that is the Winfred application I have already referred to in the opening paragraphs of this Ruling.

On 14th June 2012 it is Fridah's application which was scheduled for hearing and not Winfred's as there was no evidence either that that application was served or that her Counsel (Achach & Company Advocates) were aware of the hearing date of 14th June 2012, or indeed that the Petitioners' Counsel were aware of Winfred's application. Indeed the Court itself had not had the benefit of perusing the file before the hearing to establish whether there were other applications on the file besides that of Fridah. In the event the Court declined the application for adjournment by Miss Kahunga who was holding brief for

the firm of Ogola & Company Advocates, and the matter proceeded to hearing when Jane Muthoni Njagi one of Petitioners testified along with Grace Munyi Kagonde the mother of the deceased and closed their case.

I also declined an application to allow the Objector to testify after the Petitioners' testimony. However, having had opportunity to review the proceedings in the file and in particular that Winfred, the 2nd Objector, was not served with the Hearing Date, and was therefore unaware of the Hearing Date of 14th June 2012, it would be legally and procedurally wrong to exclude her claims in the matter of the Estate of the deceased whom she claims to have been her husband, and has a Marriage Certificate evidencing the solemnization of her marriage to the deceased on 8/03/2002.

I consequently direct that the evidence of the Petitioner/ Respondent and PW2 (Grace Munyi Kagonde) be typed and preserved and both Fridah and Winfred be heard before a formal judgment is made in the matter. I also direct that the status quo in respect of the Estate property be maintained pending the determination of the Estate of the deceased.

It is so ordered.

Dated, signed and delivered at Nakuru this 5th day of October, 2012

M. J. ANYARA EMUKULE

JUDGE