



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO. 3105 OF 2003**

**IN THE MATTER OF THE ESTATE OF CHRISTINA KABURA MUTHERE (DECEASED)**

**JUDGMENT**

1. On the 31<sup>st</sup> of October 2003 Samuel Muthere and Teresia Nyacira Mbugua filed a petition for probate of written will for the estate of Christina Kabua Muthere who died on the 23<sup>rd</sup> of April 2003 at PECA Kikuyu hospital here in Nairobi. In their affidavit in support of the said petition they have attached the deceased's written Will dated the 4<sup>th</sup> of July 1995. They have also listed the known assets the deceased left behind said to be worth about Kshs. 700,000/-. The deceased dependants are also listed in the said affidavit.
2. A grant was issued to the two administrators on the 31<sup>st</sup> of December 2003 and on the 18<sup>th</sup> of March 2010 they filed an application to confirm the said grant, they sought that the estate be distributed as per the last written Will of the deceased. The said grant was confirmed on the 13<sup>th</sup> of October 2010, the court ordered that the estate be distributed as per the written will. The beneficiaries were present in court at the time the grant was confirmed the 13/10/2010.
3. On the 18<sup>th</sup> of July 2012 James Kangiri Waweru the objector in this cause filed a summons for revocation dated the 17<sup>th</sup> of July 2012. He seeks to have the grant confirmed on the 13/10/2010 revoked on grounds that *the executors, beneficiaries of the deceased's estate have failed or ignored and refused to render true and just accounts of the Will. That the executors have completely left out some beneficiaries in the sharing of the estate of the deceased and that the executors have not disclosed a true and just account of the estate and that this court should determine the issue of administration.* In his affidavit filed in support of the said application he deposes that the executors have refused or ignored to settle debts of the estate amounting to Kshs. 500,000/- as per the will attached. It's also deposed that the grant was confirmed one of the beneficiaries Martha Wambui now (deceased) sons have never been included in sharing of the estate.
4. The application was opposed. Samuel Muthere one of the administrators filed a replying affidavit dated the 19/10/2012. He deposes that; the deceased died and left three children namely; Marita Wambui (deceased), Teresia Nyacira Mbugua and Samuel Muthere. That the family of Marita Wambui comprise of following persons Christine Kabura Maina, Lucy Nyambura Maina, James Kangiri Waweru the applicant and John Murigi Waweru. That on the 8<sup>th</sup> of July 2011 the entire family entered into an estate distribution agreement on how to practically share the assets of the estate and give effect to the Will and wishes of the deceased. That the applicant signed the said agreement signifying his acceptance of its terms of the agreement. That he has always kept a record of the accounts of the deceased's estate and he is not aware of any debts that are outstanding with respect to the deceased's estate as alleged nor is he aware of any beneficiary who has been left out in the distribution of the estate as the Will is clear about who are the beneficiaries

of the estate. That the applicant had earlier brought up the issue of the estate making payments on his behalf to Lucky Summer Welfare Association for sewer connection charges, yet the said expenses had nothing to do with estate and neither were they debts due from the estate. That Lucky Summer Welfare Association is a private members association and the applicant has not been forced to join it neither is he obligated to join a group of people who have opted to use their money to connect sewer lines. That under the Will as well as the family agreement the applicant is entitled to three assets namely;  $\frac{1}{2}$  share in L.R Nairobi/ Block 102/444 and the other half to his brother John Murigi Waweru,  $\frac{1}{24}$  share in L.R Nairobi/ Block 113/426, the other  $\frac{1}{4}$  to his brother John Murigi Waweru and  $\frac{1}{2}$  share to Teresia Nyacira Mbugua their aunt,  $\frac{1}{4}$  share in his late mother's share with Nyakinyua Women Group Makandara, which portion of share is held in trust for him by his sitter Christine Kabura Maina who holds the whole share.

5. It's further deposed that the applicant is frustrating the distribution of the estate by refusing and inciting his brother to refuse to sign the transfer forms that would give them the properties which were reserved for the late mother Martha Wambua under the Will. That his two sisters Christine Kabura Maina and Lucy Nyambura Maina have signed the transfer documents to take up the share in L.R. No. 8285/224 at Kairobhangi , Nairobi.
6. The respondent pointed out that the applicant has not stated the assets they have been deprived from the sons or the children of Marita Wambui and the specific beneficiaries so deprived, that he has not annexed any proof of debt due from the estate he claims the administrators have refused to pay and that there is no iota of weight to support the prayers for annulment under section 76 of the law of Succession Act.
7. In response the applicant filed an answer to the replying affidavit of Samuel Muthere and Teresia Nyacira. In brief this is his reply; that the grant should be revoked as it left out the administrator of Martha Wambui's estate as per the Will, that that the family agreement on the mode of distributing the estate was oral and it was agreed that the debt of Lucky Summer was to be paid which the executors have refused to pay, thus he was tricked into signing the agreement, that he did not sign the family agreement and that before passing on the deceased left the management of her properties under the management of a company called Diversity properties Ltd. That the executors have not told them what they do with the monthly income from the said company, that Samuel is a member of Lucky Summer Association and Samuel has contributed to the association and paid Kshs. 51000/- and has an arrears of Kshs. 541,583/ and the association is demanding the arrears. That he is one of the inheritors of the deceased's plot in Lucky Summer estate and he stands to suffer if NEMA takes action against the deceased's' plot because of failure to cooperate with the association. He concludes by stating that he will sign the transfer forms once the Lucky Summer debt is paid as that was the condition of signing the family agreement and that he is not citing his brother who is a grown man. The respondents did not response to this affidavit.
8. The applicant testified in court on the 20th of January 2016. The respondent though served with the hearing date did not attend the hearing. The court had given direction on the 30/10/2012 that the matter would proceed by way of viva voce evidence. This is the objector's evidence. That the deceased was his grandmother and he is the child of Martha Wambui and that the 2 administrators are his uncle and aunty. That he seeks to have the grant revoked. That his grandmother's Will was that one of the administrators be from their family and that the administrators have not obeyed her Will, that they have also refused to pay the debt at Lucky Summer. The applicant filed written submission on the 23<sup>rd</sup> of February 2016. The applicant reiterates his evidence as deposed in his affidavits in his submissions.
9. I have considered what has been deposed in the affidavits filed by the parties, the evidence and what is in the written submissions together with the law. Section 76 of the Law of Succession Cap 160 provides for revocation or annulment of the grant. Section 76 (d) provides that a grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by an interested party or its own motion that the person to whom the

grant was made has failed, after due notice and without reasonable cause either ;

- i. ***to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court ordered or allowed; or***
- ii. ***to proceed diligently with the administration of the estate; or***
- iii. ***to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular;***

10. The applicant is not contesting the deceased's Will, his reasons for seeking revocation of the grant is that the executors have failed or ignored to render true and joint account of the Will, that they have completely left out some of the beneficiaries in sharing the estate and that the executors have not disclosed a true and just account of the estate. According to the Will dated the 17th of May 2002, the deceased appointed the Samuel Muthere, Teresia Nyacira and the administrator of the estate of Marita Wambui to be the executors of her will. From the grant that was issued the respondents are the only administrators. As per the Will the estate of the Marita Wambui (the beneficiaries of the said estate who include both the sons and daughters of the late Marita Wambui) were bequeathed the following; the deceased's share(s) of a plot Makandara jointly owned with Nyakinyua Retail Group, Plot in Buru-Buru Company's Land in Njiru, Nairobi, the 3<sup>rd</sup> floor and 4<sup>th</sup> floors part of the building(s) erected on Plot No. 8285/224 at Kairobhangi , Nairobi and half (1/2) of her share in plot in Lucky Summer estate company Ltd Embakasi plots, cash at hand in the bank was bequeathed equally among Samuel Muthere, Teresia Nyacira Mbugua and the estate of the late Marita Wambui. The Will was written in May 2002 and the deceased died on the 23/4/2003. There is a letter exhibited dated the 2/2/12 in the affidavit of the 1<sup>st</sup> administrator written by the advocate of the objector asking the administrators to pay the outstanding debt owed by the estate to Lucky Summer Welfare Association with regard to the sewerage project that was being undertaken. The letter indicated that they had given verbal promises to pay the said sums. The letter made a demand that the sums due to Lucky Summer estate be paid. There is a letter in response where the administrator lawyer denies that the said debt was to be paid by the estate. What guides me on this is the Will of the deceased. In her will she bequeaths the family of Marita a half share of her plot in Lucky Summer Estate Company limited. The other half is bequeathed to Teresia Nyacira Mbugua. The deceased did not mention anything about payment of dues/debts/ taxes over the Lucky Summer plot, she is very specific on the same with the property plot no. 8285/224. The applicant claims that he was made to sign the family agreement after being promised that the debt would be paid. On this issue having noted that the plot in Lucy Summer belonged to the deceased and was bequeathed to Teresia and Marita it is only fair that the estate pays any debt that is pending on the said properties, the administrators shall therefore pay the debt owing.

11. On whether the grant should be revoked, am of the view that the applicant has not persuaded this court that what the administrators did warrants a revocation of the grant issued. There is a family agreement which he states he did not sign, however from the further affidavit which titled answer to the replying affidavit he has attached what he called a distribution agreement where he analyses how the so called family agreement was reached. In it he acknowledges the meeting that was held, how he can now deny it. They chose as a family to alter the deceased's wish to have three administrators. I find that he has failed to show why the grant should be revoked. In the family agreement they choose to have two administrators. In my view the real issue between the objectors and the executors is the debt owing to Lucky Summer Estate. I therefore decline to revoke the grant.

12. The executors have a duty to render a true and just account of the estate, this they need to do as one beneficiary has challenged them. They shall render the accounts to the objector on the part of the estate that involves the objector within 60 days from the day of this judgment. Parties are at liberty to take a mention date to confirm compliance. On the issue of sons of Wambui Martha not being included in sharing the estate I find that the Will and the family agreement clearly covers what was bequeathed to the objector's family. The objector has failed to show this court that they

have been disinherited or that he was not part of the meeting. For avoidance of doubt these are the court's orders;

- i. **The executors/ administrators of the estate of Christina Kabura Muthere shall render a true and just account of the estate of the deceased that is shared between them and the applicant/objector with 60 days from the date of this judgment. Parties are at liberty to take a mention date after the 60 days or even before to confirm compliance.**
- ii. **The court has declined to revoke the grant issued on the 13<sup>th</sup> of October 2010.**
- iii. **The executors/ administrators shall pay the pending debt of Kshs. 500,000/- to Lucky Summer Estate forthwith.**
- iv. **Each party shall bear their own costs. It is so ordered.**

Dated signed and delivered this 22<sup>nd</sup> day of June 2016.

**R.E.OUGO**

**JUDGE**

**In the presence of:**

.....**Objector**

.....**Administrators/Executors**

.....**Court Clerk**