



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 2492 OF 2005**

**IN THE MATTER OF THE ESTATE OF KAMAU WAKIIRU (DECEASED)**

**RULING**

1. The applicant Hannah Wanjiku Kamau filed a summons for review under Order 45 of the Civil Procedure Rules 73 and section 63 (i) of the Probate and Administration Rules of the Laws of Succession Act Chapter 160 Laws of Kenya seeking the following orders:-

- i. That this Honorable Court be pleased to review the orders/rulings of the court given on the 20<sup>th</sup> day of March 2015 by Honorable Lady Justice Ougo (Mrs.) in order to remove the name of Charles Mbatia as a Co-administrator of the estate of Kamau Wakiiru (deceased).
- ii. That Hannah Wanjiku Kamau be the court appointed sole administrator of the estate of Kamau Wakiiru (deceased)
- iii. That costs be provided for.

The application is based on the following grounds.

- a) Charles Mbatia is a brother to the deceased and therefore he is unsuitable to be appointed an administrator of the estate of his brother when the widow is alive.
- b) Charles Mbatia engineered the filling of Gatundu Law Courts succession cause No.3 of 2002 and he managed to obtain a grant in his names and the names of Hannah Wanjiku.
- c) The grant in Gatundu Law Courts cause was confirmed but it was revoked by Honorable Lady Justice Rawal in HCC P & A 2492 of 2005 because the said Charles Mbatia is a stranger to the estate as far as administrator is concerned.
- d) Hannah Wanjiku Kamau is a surviving spouse of the deceased and she is not under any disability.
- e) Hannah Wanjiku has children who cannot see eye to eye with the brother of their late father whose interest is to disinherit them.
- f) The deceased owned L.R. No. Kiganjo/Nembu/538 alone and was not holding the land in trust for any person (s)
- g) This court has been moved by Charles Mbatia who has managed to convince the court to make him a co-administrator.

h) The said Charles Mbatia disobeyed the directions given by Honorable Lady Justice Ougo requiring him to include all beneficiaries.

i) It is only fair and just that Mr. Mbatia be removed as an administrator.

2. The application is supported by the affidavit of the applicant dated the 17<sup>th</sup> of February 2016. She depones as follows; that she is the widow of the late Kamau Wakiiru who died in 1962. They were blessed with six children namely;

- i. Anthony Wakiiru Kamau      59 years
- ii. Mary Njeri Kamau            55 years
- iii. David Muniu Kamau        51 years
- iv. Daniel Ndirangu Kamau    45 years
- v. Naomi Nyakio Kamau        41 years
- vi. Stephen Ngige Kamau       39 years

That her late husband left behind the suit property Kiganjo/Nembu approximately 2.9 acres. That Charles Mbatia Wakiiru the respondent is the brother to her late husband. That her late husband also had other brothers and sisters namely; David Muriu Wakiiru (deceased), Mugure Mari, Mumbi Muhia, Mwiwaki Mukaria, Ndirangu Wakiiru and Kimani Wakiiru. That Charles Mbatia has been claiming ownership of her late husband's property with the intention of disinherit her children who have the right to the property since it belonged to her late husband. That when her late husband died, his brother Charles Mbatia tried to chase her and her children from the property but they did not succeed but Charles Mbatia built his house by force on a small portion of her late husband's land. That her father in law had his own land known as Kiganjo/Nembu 423 and so Charles Mbatia Wakiiru has no right to interfere with her late husband's property. That her father in law's land parcel is Kiganjo/Nembu 423 is in the process of being shared out among his children and Charles Mbatia is among the persons to benefit. That she was cheated by Charles Mbatia that they should file succession case in Gatundu as joint administrators without knowing he intended to get 50% of her late husband's land. That the case was filed at Gatundu Law courts and Charles Mbatia caused it to be confirmed and gave himself half of the land Kiganjo/Nembu 538. That this was succession cause No. 3 of 2002, Gatundu. That the confirmed grant was revoked in High Court succession cause no.2492 of 2005 Nairobi on 8<sup>th</sup> April 2008 by Honorable Lady Justice Rawal because Mbatia is a stranger to the estate. That the Registrar of lands following the order also removed the name of Charles Mbatia as a co-owner of suit property. That after the confirmed grant was revoked Charles Mbatia filed for a fresh grant misleading the court by presenting forged documents in her name and since then he has been trying to get confirmation of the grant. It is her prayer that this court will allow her and her children to be the only beneficiaries of her late husband's property and ask Charles Mbatia Wakiiru to remove his structures from her late husband's property L.R. Kiganjo/Nembu 538. That Charles Mbatia and his brothers are strangers to her late husband's estate and Charles Mbatia should be removed as an administrator of the estate. That Charles Mbatia is an imposter and he is the person who by the law should be administrator and if Charles Mbatia has any claims he should await confirmed of grant and sue the administrator or the beneficiaries. She is pleading with the court to review the ruling and order given on the 20<sup>th</sup> March 2015 by this court and to remove the name of Charles Mbatia as a co-administrator as she is able and willing to administer the estate alone.

3. The respondent filed a replying affidavit dated the 14/3/2016. He depones that; when the Gatundu grant was revoked the administratorship was not revoked and that no one is superior to the other. That the ruling delivered by this court is well balanced and that the mode of distribution of Kiganjo/Nembu 538 is as the ruling of 20/3/2015. That application should be dismissed.

4. The ruling this court is being asked to review is dated the 20<sup>th</sup> March 2016. The subject of the said ruling was one of revocation. The court after considering the application ruled that the grant issued on the 3<sup>rd</sup> June 2013 be revoked and that a fresh grant to be issued in the two parties as co administrators of the deceased's estate. The court ordered that the parties to apply to confirm the grant naming all the beneficiaries within 60 days. The applicant one of the co administrators is now seeking a review of the said orders. She seeks to have Charles Mabatia removed as a co-administrator on facts deponed in her affidavit which have been summarized and I need not repeat them.

5. The grounds upon which a court can review its own orders are well stipulated under order 45 of the Civil Procedure Rules. An order can be reviewed if the applicant can demonstrate that **“there is discovery of new and important matter or evidence, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time of the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.”** The applicants main reasons are that the she is the widow of the deceased, the respondent is a brother to the deceased and is unsuitable to be appointed as an administrator of the estate of his brother yet she is still alive, that she is not under disability and that she has children who cannot see eye to eye with the respondent and that the respondent used forged documents before. The respondent in opposing the application narrated acts of the applicant and her son Antony which he alleged were deceptive and avers that the court's order should not be reviewed. He also argues that he occupies and is entitled to a portion of the suit property Kiganjo/Ndemu 538. From what has been deponed and having observed the demeanor of the parties in court it's evident that they cannot agree. The applicant being the wife of the deceased is capable of administering the deceased's estate. The respondent can present his case at the time the matter is being confirmed so that his interest can be examined and a ruling made on the same. I find that there is sufficient cause for review the order made on the 20<sup>th</sup> March 2015 because of the animosity between the parties. This court therefore removes Charles Mabatia as a co-administrator of the estate of Kamau Wakiiru (deceased). This court appoints Hannah Wanjiku Kamau as the sole administrator of the estate of Kamau Wakiiru (deceased). A fresh grant to issue. Costs shall be in the cause. It is so ordered.

Dated signed and delivered this 20<sup>th</sup> day of July 2016

R.E.OUGO

JUDGE

**In the presence of:**

.....**For the Applicant**

.....**For the Respondent**

**M/S Charity Court Clerk**