



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO. 877 OF 2007**

**IN THE MATTER OF THE ESTATE OF JANE WAMBUI GATONYE – (DECEASED)**

**RULING**

1. On 16<sup>th</sup> May 2003 I ordered Lucy Nyokabi Wairimu to prepare and lodge in court within thirty (30) days an inventory of the assets and liabilities of the estate and an account of her administration of the estate of the deceased from the date of the deceased's death to the date of her appointment as joint administrator *pendente lite*.
2. This order was made following an earlier order appointing the said Lucy Nyokabi Wairimu and her sister Hellen Wangare Wairimu administrators of the estate of the deceased pending the hearing and determination of the objection proceedings herein.
3. The said administrator filed an affidavit on 10<sup>th</sup> March 2014 detailing the assets of the estate as well as its liabilities. She points out in the affidavit that she is only in control of some of the assets while the other assets are in control of the widow of her late brother Joseph Ngugi.
4. She states that some of the assets are income-generating. The income generated has been utilized to manage, maintain, develop and improve the structures on some of the assets. She has not given figures of the amount of income generated, nor of the amount spent on the alleged management, maintenance, development and improvement of the assets.
5. She filed a further affidavit on 24<sup>th</sup> March 2014 giving details of the income received and how it was utilised.
6. Her co-administrator, Hellen Wangare Wambui, and her sister-in-law, Jane Wanjiku Ngugi, swore an affidavit on 14<sup>th</sup> April 2014 questioning certain aspects of the accounts, accusing Lucy Nyokabi of intermeddling and of not properly accounting for certain matters. She is also accused of administering the estate selectively.
7. The latter affidavit appears to have provoked Lucy Nyokabi to file the application dated 13<sup>th</sup> May 2014. She seeks review of my order of 16<sup>th</sup> May 2013 to require that her account should be limited to the assets that she is controlling, that is to say Dagoretti/Kangemi/T378, Limuru/Kamirithu/2460 and Kangemi Market Stall No. 376. She says that she is being compelled to account for assets that she is not administering and are being administered by her sister in law, Jane Wanjiku Ngugi. She feels that she risks being blamed for failing to obey court orders.
8. The respondents have not replied to the said application.
9. The deceased herein died on 28<sup>th</sup> December 2006. She is said to have died testate having made a will

on 27<sup>th</sup> September 2005. According to the said will, she devolved her estate to her children, Lucy Nyokabi Wambui and John Ngugi. She appointed Lucy Nyokabi Wambui the executrix of the will. The named executrix filed a petition for grant of probate of the written will on 5<sup>th</sup> April 2007.

10. On 19<sup>th</sup> June 2007 Hellen Wangari Wambui gave notice of intention to object to the grant of probate being made to the petitioner. She followed up the notice with an answer to the petition and a petition by way of cross-application. There are also various affidavits filed in support of the petition and the objection.

11. The orders of 16<sup>th</sup> May 2013 appointed both the objector and the petitioner to act as interim administrators pending the determination of the objection proceedings. The appointment was not final for there is a will on record and the objection proceedings are yet to be finalized.

12. The petitioner has moved this court for a grant of probate of the will of the deceased. She says that the said will appoints her executrix, and it is on the basis of the said appointment that she seeks that grant of probate be made to her.

13. As I stated in my ruling of 16<sup>th</sup> May 2013, an executor assumes office upon the death of the testator. His office becomes effective immediately upon death and not upon a grant being made him. He does not require the grant to assume the duties of his office, but rather as evidence of his appointment. This is the law as stated in *Section 80(1)* of the Law of Succession Act.

14. The deceased passed away on 28<sup>th</sup> December 2006. It is on this date that the petitioner should have assumed office as executrix. It is on this date that the property comprising the estate of the deceased vested in her in terms of *Section 79* of the Law of Succession Act.

15. It is imperative for the petitioner to understand that she was appointed executrix of the will of the deceased and she was put in charge of all the assets that make up that estate regardless of whether they were devolved to her or to someone else. Her role is to manage the entire estate with a view to distribute it as provided in the will.

16. The effect of this is that when the deceased died on 28<sup>th</sup> December 2006, all the assets making up the estate of the deceased came under the control of the petitioner regardless of whether they were meant under the will to come to her or to Joseph Ngugi. It was on this basis that I ordered her to prepare an inventory of the assets and liabilities of the estate and to give an account of her administration of the estate for the period running from 28<sup>th</sup> December 2006 when she should have assumed office and 16<sup>th</sup> May 2013 when I appointed the interim administrators.

17. There is no error or mistake in the said order. It is the petitioner who does not appear to understand her duties as executrix. She has rendered an account which I will accept and require no more of her for now. I have noted from the account that she has not been able to have full control of the estate because Jane Wanjiku Ngugi took over the assets bequeathed to her husband Joseph Ngugi. This she did unlawfully for representation to the estate has not been made and confirmed.

8. What Jane Wambui Ngugi did amounts to intermeddling under *Section 45* of the Law of Succession Act, which, for avoidance of doubt, states as follows:-

***“45 (1). Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of or otherwise intermeddle with, any free property of a deceased person.***

***(2) Any person who contravenes the provisions of this section shall-***

***(a) be guilty an offence and liable to a fine... or a term of imprisonment... or***

***both such fine and imprisonment and***

***(b) be answerable to the rightful executor or administrator to the extent of the assets with which he has intermeddled...***

19. Jane Wanjiku Ngugi should in terms of *Section 45 (2) (b)* account for her interference with the estate for the period between when the deceased passed on and todate. The account is relevant for the court's consumption and also that of the persons who have been placed in charge of the estate.

20. I had appointed interim administrators in the hope that they would act in concert for the time being to preserve the estate even they await determination of the pending objection proceedings. That does not appear to be the case going by the documents that have been filed herein since 19<sup>th</sup> May 2013. The matter ought to be fast-tracked to end the needless squabbling.

21. I had directed on 16<sup>th</sup> May 2013 that the pending objection proceedings should be fixed for directions within 45 days from 16<sup>th</sup> May 2013. There was a default clause, that if the objection proceedings were not fixed for hearing within that period then they shall stand dismissed and a grant of probate shall issue according to Lucy Nyokabi Wambui.

22. I have carefully gone through the record. I have noted that forty-five (45) days have since expired. There is nothing on record to indicate that the objector has complied with the order of 16<sup>th</sup> May 2013, which required her to have the objection proceedings fixed for directions within forty-five (45) days. The failure to fix the matter for directions within the time stipulated has activated the default clause, that the objection proceedings shall be terminated and a grant of probate made to Lucy Nyokabi Wambui.

23. The orders that I am disposed to make in the circumstances are as follows:-

- a. That I decline to review the order made on 16<sup>th</sup> May 2013 with respect to the account to be made by the petitioner;
- b. That as the objector, Hellen Wangari Wambui, has failed to comply with order made on 16<sup>th</sup> May 2013 to fix the objection for directions, the said objection proceedings are hereby terminated and dismissed;
- c. That the grant of letters of administrators *pendente lite* made on 16<sup>th</sup> May 2013 to Lucy Nyokabi Wambui and Hellen Wangari Wambui is hereby revoked;
- d. That a grant of probate of the will of Jane Wambui Gatonye is hereby made to the executrix, Lucy Nyokabi Wambui, in accordance with the Kenya Gazette notice of 8<sup>th</sup> June 2007;
- e. That Jane Wanjiku Ngugi shall prepare and file in court within thirty (30) days an account of her handling of Limuru/Kamirithu/T.128 and Plot No. 332 Kayole Resettlement Scheme from the date of the deceased's death on 28<sup>th</sup> December 2006 and todate; and
- f. That costs shall be in the cause.

**DATED, SIGNED and DELIVERED at NAIROBI this 11<sup>th</sup> DAY OF December 2014.**

**W. MUSYOKA**

**JUDGE**

**No appearance of the advocate for the respondent.**

**In the presence of Mr. Wageni for the Mathanjuki advocate for the applicant.**