



**REPUBLIC OF KENYA**

**HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**SUCCESSION CAUSE 2649 OF 2008**

**IN THE MATTER OF THE ESTATE OF NJAU WAMBURA *alias* NJAU WAMBURA “A”  
(DECEASED)**

**NJERI NJAU.....1<sup>ST</sup> APPLICANT**

**MARGARET NGINA NDUNG’U.....1<sup>ST</sup> APPLICANT**

**TABITHA WAMBUI CHEGE.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**MUIGAI MUTOTA NJAU.....1<sup>ST</sup> RESPONDENT**

**REBECCA WANGARI KARIUKI.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Application dated 25<sup>th</sup> February 2011 is premised on the provisions of **Section 86(h)** of the **Law of Succession Act** and **Rules 46** and **63** of the **Probate and Administration Rules**. The Applicant Elizabeth Nduta Muiruri, by her Affidavit sworn on 28<sup>th</sup> February 2011 depones that she is a beneficiary of the estate of the deceased, Njau Wambura *alias* Njau Wambura “A” who was her father. That the Administrators of the estate are Njeri Njau, Stephen Kibathi Njau, Tabitha Wambui Chege and Margaret Ngina Ndungu and although Letters were issued to them on 21<sup>st</sup> October 2009, the same are yet to be confirmed as the Summons for Confirmation of Grant was filed on 17<sup>th</sup> September 2010 and a Protest to confirmation has not yet been determined. The same was filed by the said Elizabeth Nduta Muiruri and Tabitha Wambui Chege, a Co-Administratrix also filed a separate Protest.

2. It is the Applicant’s contention that the estate has been managed exclusively by Margaret Ngina Ndungu with the assistance of one Esther Ngendo Njau, a beneficiary of the estate. That inspite of requests directed at the two persons named above to avail details of the estate’s assets, income and expenditure, no such information has been availed and that the estate cannot be equitably distributed without such information being availed to the Co-Administrators as well as beneficiaries of the estate. It is for these reasons that the Application was initiated.

3. Margaret Ngina Ndungu filed a Replying Affidavit on 25<sup>th</sup> March 2010 and in it, she deponed that she has not managed the estate exclusively and that all the Administrators have been actively involved in all affairs regarding the estate. She also opposed the Prayer for her to be summoned to Court because she has given the Applicant all necessary documents and in any event, some of the Prayers by the Applicant would amount to impossibilities.

4. I have read the Submissions by Advocates appearing and to my mind the matter portends no difficulty at all. I am in fact baffled, with respect, by the Respondent's answer to the Application. At paragraph 12 of her Replying Affidavit, she depones that she opposes "the Application to have [her] and Esther Ngendo Njau summoned to Court and produce to Court and to the Applicant and the beneficiaries, a detailed account of the estate's income assets." (sic)

5. For my part, the issue is not one of choice but one where a statutory obligation is imposed on her and the other Administrators. Like Kamau, J. in Re: Estate of David Murage Muchira (deceased), H.C Succession Cause No.2077/2002 (Nbi), I am clear in my mind that the duty to render an inventory and accounts is not one that a Personal representative can wish away, casually, as the Respondent has done. **Section 83(e)** of the **Law of Succession Act** provides as follows;

***"Personal representatives shall have the following duties:-***

- a) ...
- b) ...
- c) ...
- d) ...

***e) within six months from the date of the Grant, to produce to the Court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;***

- f) ...
- g) ...
- h) ...
- i) ..."

6. In the instant case, the grant was issued on 21<sup>st</sup> October 2009 and it was the duty of the Respondent, acting in concert with her Co-Administrators to comply with the above provision and whether or not the Applicant had sought compliance, this Court would still have expected compliance.

7. The above being my finding, I only wish to state as follows; the Respondent has denied that she is in firm control of the estate to the exclusion of others. The Applicant states otherwise and I am unable to find that the allegation has been proved to my satisfaction and therefore the Orders I shall shortly make and in line with **Section 83(e)** above shall be directed at all the Administrators of the estate as opposed to the Respondent alone.

8. The final Orders to be made therefore are as follows;

*1) Let the Administrators of the estate herein appear before Court on a date to be mutually agreed between the parties and in any event within the next 90 days to produce a full and accurate inventory of the assets and liabilities of the estate of the Njau Wambura (deceased)*

*2) The Inventory shall include a full and accurate account of all dealings with the assets comprised in the estate including bank statements up to the date of production.*

*3) There shall be no order as to costs regarding the present Application.*

9. Orders accordingly.

**DATED, DELIVERED AND SIGNED AT NAIROBI THIS 27<sup>TH</sup> DAY OF JANUARY, 2012.**

**27/1/2012**  
**CORAM:**

**I. LENAOLA – JUDGE**

**Court Clerk – Miron**

**Mr. Onguto for Applicant**

**No Appearance for Respondent**

**ORDER**

**Ruling duly read.**

**ISAAC LENAOLA**

**JUDGE**

**FURTHER ORDER**

**Mention on 14<sup>th</sup> February 2012 before G.B.M. Kariuki for directions.**

**ISAAC LENAOLA - JUDGE**

**27/1/2012**