

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO.289 OF 2011

**IN THE MATTER OF THE ESTATE OF THE LATE BENJAMIN MIRICHO KARUME
(DECEASED)**

GRACE WANJIKU KIRICHIO.....APPLICANT

VERSUS

JAMES MUTHUI MIRICHO.....RESPONDENT

RULING

The respondent/administrator James Muthui Mirichio was granted letters of administration for the estate of the late Benjamin Murichio Karume by the Principal Magistrate's Court at Nyahururu on P.M.Succ.Cause No.136 of 1993. The grant was subsequently confirmed on 14th June, 2011.

The applicant, Grace Wanjiku Mirichio, a daughter of the deceased, now brings the instant summons for the revocation of the grant and for restraining orders on the grounds that the grant was obtained through defective proceedings that the court granting the probate had no jurisdiction; that the grant was obtained fraudulently by making a false statements and concealing from the court of material facts relating to the estate; that the respondent/administrator has subdivided NYANDARUA/OL KALOU/WEST 134 into seven (7) equal parts which he has distributed to the dependants. It is further averred that the sons have each been given 9.3 acres, while the daughters were given 9.3 acres to be shared between five daughters.

The applicant contends that the distribution was unfair and amounts to discrimination. The distribution ought to have been done equally irrespective of gender or marital status. The respondent/administrator has been accused of failing to disclose to the court that the value of the estate was more than Kshs.100,000/= and therefore beyond the jurisdiction of the court.

The application and the hearing notice were duly served upon the respondent/administrator who failed to respond to it or attend the court during the hearing of the application. That failure notwithstanding, the applicant is still required to prove her claim on a balance of probability.

Although clearly from the Certification of Confirmation the female children of the deceased are shown to have inherited only 2.5 acres each while each of their brothers received 10 acres. That would have been sufficient ground to revoke grant, but for the following reasons. The only asset said to constituting the estate is PLOT NO.134 OL KALOU WEST SETTLEMENT. According to the Certificate of official search dated 5th July, 2011, that property is registered in the name of Settlement Fund Trustee and not in the name of the deceased.

Secondly, the applicant's claims that her name was not included as a beneficiary of the deceased cannot be true. From the Certificate of Confirmation, it is clear that the applicant is named and is shown to be entitled to 2.5 acres.

Thirdly, it is the applicant's contention that the value of the property in question exceeds Kshs.100,000/= and was beyond the jurisdiction of the subordinate court. No valuation is annexed to this application as proof.

For these reasons, the application fails and is dismissed.

Dated, Signed and Delivered at Nakuru this 12th day of March, 2012.

**W. OUKO
JUDGE**