



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**  
**CIVIL CASE 619 OF 2005**

**MOHAMMED MOHAA.....PLAINTIFF**

**VERSU**

**PETER MBURU GATHINJAGA (Executor & Administrator Of the estate of the late KARIITHI KINUTHIA Alias KARIITHI MWANGI KINUTHIA)..... DEFENDANT**

**MARY WAIRIMU KAHIS..... 2<sup>ND</sup> INTERESTED PARTY/APPLICANT**

**ANN NJERI KNOTT..... 3<sup>RD</sup> INTERESTED PARTY/APPLICANT**

**RULING**

Notice of Motion dated 24/1/2012 signed by Ann Njeri Knott and Mary Wairimu Kahia described as 2<sup>nd</sup> and 3<sup>rd</sup> interested parties.

Mary Wairimu Kahia has appointed by Power of Attorney Eustace Nduhio Kahia to act for her in this application.

The Notice of Motion seeks

Injunction to issue against the administrators of the estate of Jerald Wachira Macharia to restrain them, their servants and agents from withdrawing any funds from Gimco Ltd until the sum of Ksh.499,998.20 is paid to each 4<sup>th</sup> and 5<sup>th</sup> interested parties.

That in the alternative Gimco Ltd the property managers of LR 209/2716 and LR 209/783/17 of the estate be ordered to pay to the 4<sup>th</sup> and 5<sup>th</sup> interested parties the sum of Kshs.499,998.20 each that is due to them.

The application is based on stated grounds that the applicants are two out of nine beneficiaries in the estate Jerald Wachira Macharia which estate comprises the two properties LR 209/2716 and LR

209/783/17. And a court order issued on 15/1/2009 directed that Gimco Ltd do release 50% funds amounting to Kshs.1,974,009.90 to the firm of Wachira Ndungu Advocates for the distribution to the beneficiaries of the estate.

That the administrators distributed the sum of Ksh.1,499,994.60 only to 3 beneficiaries namely

1. Jane Wanjiru Wambugu
2. Winnie Wangui Macharia
3. Beatrice Wairimu

and that to date the applicants are yet to receive each their fair share of Kshs.499,998.20. The application is supported by affidavit of Ann Njeri Knott, one of the applicants and beneficiaries. They have filed a notice to act in person. The deceased owned the property jointly with the late Kariithi Kinuthia and his estate is administered by the defendant in this suit.

Consent order was signed by counsel for the plaintiff and the defendants where it was agreed that Gimco Ltd do release 50% of funds amounting to Kshs.1,974,007.90 to Wachira Ndungu Advocates for distribution to beneficiaries. Only sum of Kshs.1,499,994.60 was released to 3 beneficiaries each getting Ksh.444,013.20 and the balance of Kshs.167,955 was deducted as legal fees by the advocate.

The advocate distributed the money according to his view and in respect of parties who were in proceedings. Later Ruth Wanjiku Wachira was then deceased. The applicants had not appointed the advocate Wachira Ndungu at the time the order was made. The fees charged was direct expense to three beneficiaries.

At this time the administrators of the estate of Jerald Wachira Macharia and estate of Ruth Wanjiku Wachira were herself and Elizabeth Nyambura who were not consulted neither were they served with application. A grant of administration is ANK 7 & 8. To date they have not received their fair share of funds released. The Managers Gimco Ltd have enough funds in the estate amounting to Kshs.1,396,924.00. It is therefore fair that the said claim of Kshs.499,998.20 be paid to the applicant.

In reply Stephen Nganga has sworn affidavit as an advocate of M/s Wachira Ndungu & Co-administrator to the estate of Jerald Wachira Macharia (deceased) with TTN Aswani and Donald Owang as do-administrators. That the application dated 24/1/2012 seeking to restrain the administrators from withdrawing funds from Gimco Ltd the manager of the estate of the deceased is incompetent and frivolous.

The order was issued before the current administrators were appointed on 18/5/2009 only the two applicants have issues with the administrators not 7 other beneficiaries. On instructions of one beneficiary Beatrice Wairimu Maina a formal application was made to court in December 2008 for release of some funds to beneficiaries. A consent was recorded in court on 8/1/2009 and was issued on 15/1/2009.

That pursuant to that consent order the firm of Wachira Ndungu & Co. Advocates was paid Kshs.1,974,007/90 which the firm was to distribute to all nine beneficiaries. The advocates grouped the beneficiaries into four households with each household receiving Kshs.444,013/20.

The applicants were grouped together with

1. Milicent Wangui Wachira
2. Elizabeth Nyabura Wachira
3. Dorcas Wanja

#### 4. Josephine Wangari

All in the household of Ruth Wanjiku Wachira which household received Kshs.444,013/20. According to the claim of the applicants if each beneficiary was to receive Kshs.499,998/20 it means that the money received from Gimco the managers should have been Kshs.4,499,982.

The applicants share of Kshs.444,013/2 was deposited in the account of estate of Ruth Wanjiku Wachira now deceased. They now want their share to be released to them. The deponent added that Anne Njoki Knott has challenged the mode of distribution in succession Cause No.721 of 1985 currently pending a ruling before Hon. Lady Justice Nambuye.

Further the applicants intend to usurp the powers conferred on administrators under Succession Act Cap.160. Application lacks merit and should be dismissed.

Anne Noki Knott has filed a further affidavit in response to the replying affidavit which shows that advocate Njenga withheld the money for more than 6 months until 18/5/2009 when they appointed administrators. They were withholding money until 16/6/2009.

All beneficiaries ought to consent not only a majority. And M/s Wachira Ndungu was not administrator and neither Beatrice Wairimu Maina hand right to issue instructions to demand release of the funds from estate managers it was erroneous and making orders was misguided.

The said Stephen Njenga distributed the estate funds to the beneficiaries by virtue to order revoked in 2007. The funds from estate of Jerald Wachira Macharia should not have been distributed to the estate of Ruth Wanjiku Wachira.

That Elizabeth Nyambura, Dorcas Wanja and Milicent Wangui protested on the mode of distribution. The said sum of Kshs.444,013.20 was not sent to the estate of Ruth Wanjiku Wachira by administrators on 29/9/2010. The said sum of Kshs.444,013.20 has nothing to do with the claim of Kshs.499,998.20 herein. All beneficiaries received equal shares see "ANK 8" and "ANK 9".

The estate of Ruth Wanjiku Wachira is not a beneficiary in the estate of Jerald Wachira Macharia. Each applicant should receive Ksh.499,998.20. I have perused carefully the complaints of the applicants. It is dear that court orders have been issued in this estate regarding the distribution of assets among the beneficiaries

1. On 10/3/1998 Justice Kuloba made order.
2. Hon. Lady Justice Aluoch made order on 15/5/2007.
3. On 22/1/09 cheque was made available in the sum of Kshs.1,974,007 by Gimco Ltd the managers of the estate out of which the applicants demand each a share of Ksh499,998.20 saying the administrators distributed only 1,499,994,60 to three beneficiaries. It is not clear where the balance was paid.

I order that the administrators are hereby restrained their servants or agents from withdrawing any funds from Gimco Ltd until proper accounts of the funds so far distributed to the beneficiaries all 9 of them are filed in court by the administrators. The accounts shall be filed within the next 14 days from today.

The application shall be mentioned before court on 29/5/2012 for further orders. Injunction granted shall continue until further orders of the court.

**Dated and delivered this 16<sup>th</sup> day of May, 2012.**

**J.N. KHAMINWA**

**JUDGE**