



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
Succession Cause 499 of 2011**

IN THE MATTER OF THE ESTATE OF JOSEPH MUNGAI NJOROGE (DECEASED)

HUMPHREY NJOROGE MUNGAI.....APPLICANT

VERSUS

**HELLEN WANJIRU MUNGAI.....RESPONDENT/ADMINISTRATRIX
RULING**

This application has been brought by one of the dependants of the deceased in this cause. It seeks that the administratrix be directed to render an account and/or proper inventory of the estate, providing a list of how she has distributed the same. The application is based on the grounds that the administratrix is not a widow of the deceased but was his driver; that upon the death of the deceased, the administratrix relocated from her home to the deceased person's home; that the administratrix failed to notify the applicant and the other beneficiaries of this cause; that the administratrix has not disclosed BAHATI KABATINI BLOCK 1/3085 belonging to the estate which together with PLOT NO.15 MUKINYAI she has sold.

The administratrix has denied the foregoing allegations. She has maintained that she is the widow of the deceased; that the applicant and other beneficiaries have been allocated NAKURU MUNICIPALITY BLOCK 29/1546 (RONDA); that the applicant collects rent from that property through M/s. Pata Commercial Agencies. She further avers that the applicant and his siblings raised similar issues in Nakuru HCCC No.246/2007 (O.S.), which suit was comprised after the parties recorded a consent in which the applicant and his siblings agreed not to have any claim to the estate of the deceased apart from NAKURU MUNICIPALITY BLOCK 29/1546 (RONDA). The administratrix maintains that she has diligently administered the estate.

I have considered the application and the foregoing arguments. The only prayer in the application at this point is whether the administratrix ought to be ordered to render an account or an inventory. **Section 45** of the **Law of Succession Act** does not only criminalize intermeddling with the property of a deceased person but also gives the administrator or executor a right to demand an account.

Similarly, **Section 94** requires an administrator who is negligent or who misapplies the assets or subjects any asset to loss or damage to make good any loss or damage so occasioned.

In the matter before me, it is alleged:

- i) that the administratrix was not married to the deceased;
- ii) that she obtained the grant secretly;
- iii) that she has sold two parcels of land which constitute part of the estate;

iv) that she has not disclosed some properties of the deceased.

The estate was distributed by the court (Rimita, J) in a judgment rendered on 13th March, 2000 and later by a consent recorded in Nakuru HCCC No.246/2007 (O.S) on 28th July, 2008.

The court in the aforesaid judgment, found, after hearing *viva voce* evidence, that the respondent/administratrix was married to the deceased under the Kikuyu customary law. This question is therefore not available for determination by this court, the same having been determined by a court of coordinate jurisdiction, which determination has not been challenged on appeal. Likewise, the question of how the administratrix obtained the grant was considered by that court.

Humphrey Njoroge, the applicant, according to documents filed with the petition in this cause was only 15 years old in 1999 when the cause was filed. The judgment directed the administratrix to hold the properties in trust for herself and for the children of the deceased person. Eight years after the judgment, the applicant, who was now an adult (24 years) recorded a consent together with his siblings that they would have no claim over the estate, apart from NAKURU MUNICIPALITY BLOCK 27/1546 (RONDA) which had been allocated to them and a title deed issued in their names.

That consent has not been set aside. It follows that the applicant is estopped from demanding an account from the administratrix in respect of any other property constituting the estate. Finally the applicant has not produced evidence that BAHATI/KABATINI BLOCK 1/30085 is/was registered in the name of the deceased and therefore forms part of his estate.

For these reasons the application fails and is dismissed with costs to the respondent/administratrix to be borne by the applicant, Humphrey Njoroge Mungai.

Dated, Signed and Delivered at Nakuru this 31st day of July, 2012.

**W. OUKO
JUDGE**