



IN THE MATTER OF THE ESTATE OF GERALD WACHIRA

RULING

The proceedings herein have been protracted. A perusal of the file reveals presence of a file which appears to have been mutilated either voluntarily or involuntarily as the flow of both the paper work filed as well as the court record proceedings is not consistent and straight. This gave the court a hard time when trying to piece weave and kneat together the back ground history of this long protracted dispute with a view to using this historical background information as an anchor for drawing out conclusions on the facts to assist the court draw out conclusions for the determination of the issues in controversy with a view to trying to assist the parties bring this acrimonious litigation to a rest. I say without hesitation that had the abstract Wanjiku been human enough to access this record, it is a proper record over which she would have wailed at the contribution by the conduct of all the persons on board in delaying this matter. The initial administrators for not moving with diligence to distribute and wind up the estate; the beneficiaries for fighting amongst themselves and yet they are children of same parents; the lawyers who have been coming on board every now and then for not providing dispassionate guidance on how to steer the litigation to a speedy logical conclusion and the court for not interpreting and construing applicable law properly in order to make informed orders with a view to assisting the parties resolve the dispute in the best interest of all the beneficiaries on board. This being the case it is the duty of this court to inspect the background history as thoroughly as possibly while high lighting at the same time errors omitted on the record which have contributed in prolonging this litigation and provide the way forward on how the beneficiaries as well as the administrators currently on board can be guided to bring this litigations to a final determination.

It is common ground that the proceedings herein relate to the estate of one Jared Wachira Macharia who died on the seventeenth June, 1985 as per the content of the death certificate No.29092 issued on the first day of July, 1985 by, the Registrar Nairobi. The said deceased was the father and father in law to the disputants herein.

The succession proceedings were set in motion by one Ruth Wanjiku Wachira in her capacity as the then widow of the deceased and one Samson Kabare a brother in law of the deceased. The proceedings are intestate vide succession cause no 721 of 1985 filed on the 17th day of October, 1985. The beneficiaries of the estate of the deceased are set out in paragraph 4 of the supporting affidavit as:-

Ruth Wanjiku Waachira- widow,Hezekiah Wambugu Wachira- son, Anne Njeri- daughter married,Josephine Wangari- Married daughter,Peter Maina- son,Mary Wairimu-married daughter,Dorcias Wanja- daughter and Catherine Nyambura –daughter.

The assets contained in paragraph 6 of the supporting affidavit are listed as-

LR.LOC.4/Kiru1/965/6Muranga,LR.LOC.14/Kiru/1965/54Muranga,

LR.Loc.14/Kiru/1965/44-Muranga,LR. No. Loc.14/Kiru 1793-Muranga.

The first grant was issued on the 23rd day of January, 1986. The application for confirmation was presented to court on the 6th day of August, 1987. Paragraph 2 of the supporting affidavit listed the

following as the beneficiaries of the estate of the deceased.

Ruth Wanjiku Wachira- widow,Hezekiah Wambugu Wachira- son,Ann Njeri-daughter, Josephine Wangari- daughter, Peter Maina – son,Mary Wanjiru- daughter, Dorcas Wanja- daughter and Catherine Nyambura- daughter.

All the afore mentioned beneficiaries are indicated to have been adults. Vide paragraph 4 of the supporting affidavit to the application for confirmation, the entire estate was to devolve to the widow to hold in trust for all the children of the deceased. The certificate of confirmation traced on the record indicates the same. Only two beneficiaries filed consents to confirmation namely Hezekiah Wambugu Wachira and Peter Maina Wachira.

The schedule of property accompanying the application for confirmation is missing but the court has traced a copy of it which was refilled in court on the 25th February, 1998. It is dated the 7th day of October, 1987 and the same is reproduced here under for purposes of the record and assessment.

Certificate of Confirmation

A. Ruth Wanjiku Wachira.

- (1) LR. LOC.14/Kiru/1965/6- whole**
- (2) LR. LOC.14/Kiru/54- whole**
- (3) LR. LOC.14/Kiru/44- whole**
- (4) LR. LOC14/Kiru/1973- whole**

All in Muranga- Ruth Wanjiku to hold all of them in trust for her children.

How they should be divided.

- 1. LR.LOC.14/Kiru 1965/6- Winny Wangui Macharia- whole.**
 - 2. LR. LOC 14/Kiru/54- Ruth Wanjiku Wachira- a half share.**
 - 3. LR. LOC 14/Kiru/44- Peter Maina – whole.**
 - 4. LR. LOC.14/Kiru/1793- renumbered LR LOC.14/Kiru/2725.**
- Peter Maina Wachira- A quarter.**
 - Jane Wanjiru Wambugu- A quarter**
 - Winny Wangui Macharia – A quarter**
 - Ruth Wanjiku Wachira – A quarter.**

B. Order Dated 8th July,1991.

Assets should be divided as below- Ruth Wanjiku Wachira- whole of the following.

- (1) Title No. Loc.14/Kiru/1751- Winny Wangui Macharia – whole.**
- (2) LR. LOC.209/6419- Peter Maina Macharia- whole.**
- (3) LR. No. 209/6045 (original LR. 209/4844/109 Peter Maina Macharia- whole.**
- (4) LR. No.209/6008 Jane Wanjiru Wambugu- whole**
- (5) LR. No.14/Kiru/897 presently renumbered 3379-**
-Ruth Wanjiku Wachira-8.5. Acres

- Peter Maina Wachira – 8.5. Acres

Jane Wanjiru Wambugu- 8 acres

C. Order dated 2nd July, 1997 how they should be divided.

(a) LR. NO.209/785/17 (Original L.R.209/785/6/1.

- Ruth Wanjiru Wachira – An eighth of the share.
- Peter Maina Wachira- An eighth of the shares
- Winny Wangui Macharia- an eighth of the shares
- Jane Wanjiru Wambugu- an eighth of the shares.

(ii) LR. NO. 209/2716

- Ruth Wanjiku Macharia- An eighth of the shares
- Peter Maina Wachira- An eighth of the shares
- Winny Wangui Macharia- An eighth of the shares
- Jane Wanjiru Wambugu- An eighth of the shares.

The following were not disclosed to court but should be divided as follows:-

1. LR. LOC.14/Kiru/2732

Ruth Wanjiku Wachira- A quarter.

Peter Maina Wachira- A quarter

Winny Wangui Macharia- A quarter

Jane Wanjiru Wambugu- A quarter.

2. ICDC Investment Company Limited share certificates Nos. 28005, 13035, No.055687 and No.654948.

Ruth Wanjiku Wachira- A quarter of all shares.

Winny Wangui Macharia- A quarter of all shares

Peter Maina Wachira- A quarter of all shares

Jane Wanjiru Wambugu- A quarter of all shares

3. East African Breweries Limited share certificates Nos.0254369.

- Ruth Wanjiku Wachira- A quarter of the shares
- Winny Wangui Macharia- A quarter of the shares.
- Peter Maina Wachira- A quarter of the shares
- Jane Waanjiru Wambugu- A quarter of the shares.

4. Munyaka Kura Company Limited – shares certificate No.173.

- Ruth Wanjiku Wachira- A quarter of the shares

- **Winnie Wangui Macharia- A quarter of the shares**
 - **Peter Maina Wachira – A quarter of the shares**
 - **Jane Wanjiru Wambugu- A quarter of the shares.**
5. **Sukuma Wiki Co-operative society Limited share certificate No.173.**
- **Ruth Wanjiku Wachira- A quarter shares**
 - **Winnie Wangui Macharia – A quarter of the shares.**
 - **Peter Maina Wachira- A quarter of the shares**
 - **Jane Wanjiru Wambugu- A quarter of the shares.**
6. **BAT Kenya limited ordinary share certificate No.4511.**
- **Ruth Wanjiku Wachira- A quarter of the shares.**
 - **Winnie Wangui Macharia- A quarter of the shares**
 - **Peter Maina Wachira- A quarter of the share.**
 - **Jane Wanjiru Wambugu- A quarter of the share.**
7. **Equity Building society investment shares certificate No.56735-13 and 0729-13.**
- **Ruth Wanjiku Wachira – A quarter of the shares.**
 - **Winnie Wangui Macharia- A quarter of the shares**
 - **Peter Maina Wachira- A quarter of the shares**
 - **Jane Wanjiku Wambugu- A quarter of the share.**
8. **Kenya Breweries Limited share certificate No.0320022, 0286058.**
No.0320022, 0286058.
- **Ruth Wanjiku Wachira –A quarter of the shares.**
 - **Winnie Wangui Wacharia- A quarter of the shares**
 - **Peter Maina Wachira- A quarter of the shares**
 - **Jane Wanjiru Wambugu- A quarter of the shares**
9. **Kenya Commercial Bank Limited Golden Account No.172244558.**
- **Ruth Wanjiku- A quarter of money in the bank Account.**
 - **Peter Maina Wachira- A quarter of the money in the Bank account.**
 - **Winnie Wangui Macharia- A quarter of the money in the Bank Account.**

- **Jane Wanjiru Wambugu- A quarter of the money in the Bank Account.**

10. Equity Society Savings Account.No.05-08145.

- **Ruth Wanjiku Wachira- A quarter of the money in the bank account.**
- **Winnie Wangui Macharia- A quarter of the money in the bank account.**
- **Peter Maina Wachira – A quarter of the money in the Bank account.**
- **Jane Wanjiru Wambugu- A quarter of the money in the Bank account.**

11. Muranga Farmers cooperative Union Limited savings Account No. 0338-05374.

- **Ruth Wanjiku Wachira- A quarter of the money in the bank account.**
- **Winnie Wangui Macharia- A quarter of the money in the bank account.**
- **Peter Maina Wachira- A quarter of the money in the bank account.**
- **Jane Wanjiru Wambugu- A quarter of the money in the bank account.**

12. Kenya Commercial Bank Limited Golden Account- Account No.143-063.386.

- **Ruth Wanjiku Wachira- A quarter of the money in the Bank account.**
- **Winnie Wangui Macharia- A quarter of the money in the bank account.**
- **Peter Maina Wachira- A quarter of the money in the bank account.**
- **Jane Wanjiru Wambugu- a quarter of the money in the bank account.**

It is observed from the afore set out distribution schedule that it has gone contrary to the content in the paragraph 4 of the supporting affidavit to the application for confirmation which had indicated that the estate property would devolve to the widow to hold in trust for all the children both girls and boys. The same content is repeated in the first page of the certificate of confirmation. It is clear that all the daughters of the deceased were excluded from the distribution lists. It is not clear as to whether they were aware of this move as at 1987.

On the 12th day of June,1991 Ruth the then widow and one Wanjiku Wachira of the administrators and grant holder of the grant to the estate of the deceased presented an application under section 3A of the CPA by way of chamber summons dated the 11th day of June,1991. The reliefs sought are as follows:-

(1) That the following properties be added in the schedule of properties contained in the certificate of confirmation of a grant in respect of the estate of the above deceased person issued to his widow Ruth Wanjiku Wachira and Samson Kabare as the administrator of the estate on the 7th day of October, 1987.

(i) Title No. Loc.14/Kiru/1751.

(ii) LR. No.209/6419.

(iii) LR. No.209/6045 (original number part of 209/4844/1071).

(iv) LR. No.209/6008

(v) Title No. LOC.14/Kiru/897

2. Cost of this application be provided for.

A perusal of the supporting affidavit reveals that the deponement was to the effect that the failure to include the properties sought to be included in the confirmed grant was by reason of inadvertence on the part of the advocates who were then acting for the petitioner applicant; that the two administrators had been duly appointed as joint trustees of the estate of the deceased; reconfirmed that the properties which had been invented indeed form the estate of the deceased; reiterated that the properties sought to be introduced to form part of the estate of the deceased indeed form part of the estate of the deceased and had been omitted from the inventory due to inadvertence on the part of the lawyer then acting for the administrator; vide paragraph 8 of the said supporting affidavit it is deponed that:

“I am desirous to transfer the deceased’s pieces of land to my respective children for whom I hold the property on their trust and I would like the parcels mentioned in paragraph 7 above to be included in the list of properties owned by the deceased contained in the schedule of the certificate of confirmation of grant. And I swear this my affidavit in support of my application that the said properties be included in the said list”

A perusal of the hand draft court record reveals that the afore stated application was allowed on the 1st day of July, 1991 and extracted on the 8th day of July, 1991. It is therefore common ground that the named properties formed part of the estate of the deceased. This is further fortified by the fact that the said deponent Ruth Wanjiku Wachira went further to annex the title documents for the said properties namely LOC.14/Kiru/1751, LR.209/6045 (Original no part of 209/4844/07) held for a period of 99 years from 1/9/1962, LR. NO.19252, LR.NO.209/6008 also held for a term of 99 years from 1/09/1960 and L.R. NO.18175, LR. NO.209/6419 also held for a term of 99 years from 1/08/1963 and LR. NO. 19928. All these properties bear the names of Jared Wachira Macharia as the proprietor.

There is also on the record an application dated the 26th day of May,1992 and filed on the 28th day of May,1992. It is also brought by way of chamber summons under section 3A of the CPA. Two reliefs are sought namely:-

(1) That one half of the undivided share of the property known as LR. NO.209/785/17 (original number 209/785/6/1 and LR. NO.209/2716 together with the buildings and improvements erected thereon be added in the schedule of properties contained in the certificate of confirmation of grant in respect of the Estate of the above deceased person issued to his widow Ruth Wanjiku Wachira and Samson Kabare as the administrators of the said estate on the 7th day of October, 1987.

(2) Costs of this application be provided for”

The said application is supported by the affidavit of one Ruth Wanjiku Wachira whose summary of deponements is to the effect that she has authority from one Samson Kabare to so depon; that at the time of the deceased’s death he was proprietor of half undivided share of plots known as LR. NO.209/785/17 (original number 209/785/6/1) and LR. NO. 209/2716 together with the buildings erected thereon more particularly known as Waranga house; that at the time of obtaining the grant, the documents relating to the ownership of the said property were with the deceased advocate; that the deponent had at the time of deponing obtained the same and she was desirous of having the said property included in the certificate of confirmation; that the said property had been transferred to the deceased together with one Kariithi Kinuthia. To fortify the application there is annexed a transfer made in October, 1974 confirming the transfer as a fore said in favour of the deceased and another.

The afore mentioned application gave rise to the issuance of an order of court issued on the 26th day of June,1992 but extracted and sealed on the 2nd day of July,1992 thus:-

(1) That one half of the undivided share of the properties known as LR. NO.209/785/17 (original number 209/785/6 (1) and LR. No.209/2716 together with the buildings and investments erected thereon be added in the schedule of properties contained in the certificate of confirmation of a grant in respect of the estate of the above deceased person issued to his widow Ruth Wanjiku Wachira and Samson Kabare as the administrators of the Estate on the 7th day of October,1987.

(2) That the property to be distributed as per the confirmed grant.

(3) No award of costs”

On the 4th day of February,1997 one Samson Kabare presented an application dated the 4th day of February,1997 and filed the same date brought under rule 73 of the succession rules and section 76 of the succession Act cap 160 Laws of Kenya and all enabling provisions of law. The reliefs sought by the applicants are as follows:-

(1) That the grant of letters of administration to the estate of Jared Wachira Macharia deceased granted to the Applicant and Ruth Wanjiku Wachira be revoked and or annulled.

(2) That this Honourable Court be pleased to appoint Peter Maina Wachira, Jane Wanjiru Wambugu and Winnie Wangui as joint administrators.

(3) That costs of this application be in the cause”

The deponent of the supporting affidavit depones that him Samson Kabare had been appointed a joint administrator with Ruth Wanjiku Wachira; that the deponent is married to the sister of the deceased; that the co administrator got a stroke and as at the time of deponing the affidavit she was bed ridden and could not talk and for this reason she could not effectively administer the estate which comprises some houses in Nairobi and Muranga which are rental; that the co-administrator used to manage the said properties which involved collection of rents and distributing them to the beneficiaries; that the eldest son of the deceased Timothy Macharia had died but survived by his lawfully married wife Winnie Wangui; that the second born son Hezekiah Wambugu Wachira had also died leaving his lawfully married wife Jane Wanjiru Wambugu; that there is also one surviving son Peter Maina Wachira; that by reason of the co-administrators sickness the estate of the deceased was in disarray and the daughters who were married had started intermeddling with the estate by demanding that all the rental income should be paid to them and that the title documents be released to them; and that for the reasons given the court do appoint the surviving son peter Maina Wachira, Jane Wanjiru Wambugu and Winnie Wangui as administrators to the estate in the place of the mother and the co-administrator.

Reliance was placed on to a medical report from Dr. Kioko H.M. dated 30th January,1997 which indicated that the patient Ruth Wachira was a victim of Diabetes Mellitus with hypertension and thrombotic stroke resulting in inability to comprehend and respond appropriately in both speech and written material and in ability to use the right leg and hand.

The next day of 5th day of February an opposing application was presented on behalf of the first administrator Ruth Wachira dated 5th February 1997 and filed the same date. The application was brought by way of chamber summons under section 74 of the law of succession Act and rule 43, 49 and 72 of the probate and administration rules seeking the following reliefs.

(1) That the grant of letters of administration issued to the said Ruth Wanjiku Wachira and Samson Kabare on the 23rd day of January,1986 and confirmed on 7th day of October,1987 be rectified in the following respects as provided for by Rule 43 (1) of the probate and Administration rules.

(i) Samson Kabare be removed as an administrator and Ruth Wanjiku Wachira be left as the sole administrator.

(ii) The following properties belonging to the deceased person which were left out during the confirmation of the grant be included

(a) LR. NO. 209/6008 Maringo Nairobi.

(b) LR. NO. 209/6045 Mbotela Nairobi

(c) LR. NO. 209/785/17 &209/2716. Waranga house Nairobi.

The supporting affidavit had been deponed by one Ruth Wanjiku Wachira to the effect that the properties sought to be included had been left out; that the administrator sought to be dropped had become uncooperative and was said to be sowing discord among the deceaseds' children; that the co-administrator was not a beneficiary and as such he stood to suffer nothing if dropped as an administrator; that the children were all adults and as such there is no need for a joint administrator. The affidavit contains a copy of title document for LR.NO.209/6008 and lease agreements.

On the 11th day of March,1997 Messers T.T.M. Aswani advocate s presented an application filed on the 13th day of March,1997. The application was presented under section 76 of the law of Succession Act chapter 160 laws of Kenya and rules 44 and 73 of the Probate and Administration Rules. The following reliefs are sought:-

(1) That the letters of administration to Ruth Wanjiku Wachira Co-administrator with Samson Kabare made on the 23rd day of January,1986 and confirmed on the 7th day of October,1987 be revoked on the ground that the grant had become useless and in operative through subsequent circumstances.

(2) That the interested parties herein be appointed instead of the said Ruth Wanjiku Wachira to act jointly with Samson Kabare the administrator of the estate as the administrators of the estate of Jerald Wachira Macharia.

(3) That the costs of the application be provided for.

The supporting affidavit was deponed by one Peter Maina Wachira. The salient features of the same are that he was by then aged 18 years; the deceased died on the 17th day of June,1987; and letters of administration had been granted to Ruth Wanjiku Wachira and Samson Kabare; that the said letters of administration had become useless and in operative through the serious sickness of one of the administrators Ruth Wachira; that the grant had been confirmed on the 7th day of October,1987 and the estate of the deceased had been administered to the extend of managing the house of the deceased in Nairobi and Muranga and collecting rents and distributing the proceeds to the beneficiaries of the estate of the deceased; the deponent was the only surviving son of the deceased, the other two sons having died subsequent to the issue of the grant of letters of administration; that the deceased sons left behind their widows and their children who still require support and assistance from this estate of the deceased after the widow Ruth Wanjiku Wachira fell sick and after the death of the deponents two brothers, the deponents married sisters namely Anne Knott, Josephine Wangare Njuguna, Mary Ngatia and Millicent Gikonyo had interfered and intermeddled in the administration of the estate of the deceased to the extent that they were now collecting rents from the properties without accounting for the same to the beneficiaries of the estate of the deceased; that according to Kikuyu customary law married daughters are not entitled to inherit the deceaseds' property while his male heirs are alive, that the said deponents' married sisters had filed an application dated 5th February,1997 and attached an affidavit purporting to have been thumb printed by Ruth Wachira; that it is the deponents stand that if Ruth Wachira was in a position to give instructions, then she could have appended her usual signature, and consequence thereof the deponent contended that the said application purportedly presented by the said Ruth Wachira was bogus and false and aimed at derailing the administration of the estate of the deceased; that it is in the best interest of justice that the grant of letters of administration should be granted to the deponent and the widows of the deponents deceased brothers who still need the support of the estate of the deceased.

The hand written record of proceedings shows that the application dated 4th day of February, 1997 which had been presented by one Samson Kabare the co administrator with Ruth Wachira was withdrawn on the 28/5/1997.

During the pendency of the hearing of the application dated 11/3/97, the same Peter Maina Wachira and his co-applicants presented an application dated the 23rd day of May, 1997 and filed on the 26th day of May, 1997. The reliefs sought were as follows:-

1. Spent

2. **That this court be pleased to issue a temporary injunction restraining Josephine Wangare Wachira herein after called Attorney of Ruth Wanjiku Wachira widow of the deceased Jared Wachira Macharia from further dealing with the estate of the deceased until the application filed herein on 13th day of March,1997 is heard and finalized.**

3. **That costs of this application be provided for”**

The application was supported by the affidavit of Peter Maina Wachira and Samson Kabare. The sum total of the contents of the said affidavits are that Peter and his co applicants had filed an application to revoke the grant issued to Ruth Wachira and Samson Kabare; that Samson Kabare has never been a co applicant to any joint account with Ruth Wachira; that Ruth Wachira was now bed ridden and her daughters namely Anne Knott, Millicent Wangui and Josephine Wangare had refused the said Samson Kabare from Ruth Wachira and lastly that there have never been consultations between the co-administrators with regard to the administration of the estate of the deceased.

The application filed on the 26th May, 1997 had been necessitated by the fact that one Ruth Wanjiku Wachira had given power of Attorney to one of her daughters Josephine Wangari Wachira. The copy traced on the record is dated 11th November, 1996. Of importance to these proceedings, **is the power to manage and transfer and the donors (Ruth Wanjiku Wachira) affairs in LR. NO.209/75/17,209/2716 and all other parcels of land to wit at Shauri Moyo estate Nairobi, Kabathayo Petrol station in Muranga and Mugumoini Muranga and execute such deeds or instruments as may be necessary or most to my (donors) advantage and to use all lawful ways and means there to as such and effective to all intents and purposes as might or could do if personally present and acting herein...”**

It is also evident that in a move to make use of the said power of Attorney, the said Josephine Wangare Wachira on behalf of the said Ruth Wanjiku Wachira executed a lease with one Stanley Alfred Macheru for a period of five years with regard to LR. 209/6419 Shauri Moyo. The lease was for five years; moved to transfer E.A. Breweries shares to Peter Maina Macharia, Winny Wangui and Ruth Wanjiku Wachira, BAT Kenya limited ordinary shares to Peter Maina Wachira, Ruth Wanjiku Wachira, Winny Wangui Macharia and Jane Wangui Wambugu, Muranga Farmers Co-operative Union Limited savings account to Peter Maina, Ruth Wanjiku Wachira, Winny Wangui Macharia and Jane Wanjiku Wambugu, Kenya Commercial Bank Limited Golden account No.172244558 to Peter Maina Macharia, Ruth Wanjiku and Winny Wangui Macharia, Kenya commercial bank Golden account No.0143.063.386 to Peter Maina Wachira, Ruth Wanjiku Macharia, Sukuma Wiki Cooperative Society Limited share certificate No.173 to Peter Maina Wachira; Ruth Wanjiku Wachira, Winny Wangui Macharia, Equity building Society Savings account No.05-08145 to Peter Maina Wachira, Ruth Wanjiku Macharia, Winny Wangui Macharia and Jane Wanjiru Wambugu. Equity buildings Society Investment share certificate No.0729-13 to Peter Macharia, Winny Wangui Macharia, Ruth Wanjiku Macharia and Jane Wanjiru Wambugu.

The court has not traced the hand draft court notes on how the application of 11/3/97 was disposed off or the orders resulting there from. But there appears to have been an application seeking orders that the Deputy Registrar do sign some transfer documents. The resulting orders appear to have been made on the 3rd day of March,1998 and extracted on the 18th day Of March,1998 along the

following lines:-

(1) That the Registrar of this Honourable Court be and is hereby authorized to sign the necessary documents as shown on the schedule.

(2) That money with Kenya Commercial Bank Limited Golden account No.05-08145, Muranga Farmers Co-operative Union limited savings account No.0338-05374 and Kenya commercial Bank Limited Golden Account, Account No.0143,063.386 be distributed amongst the following Ruth Wanjiku Wachira, Peter Maina Wachira, Winny Wangui Macharia and Jane Wanjiru Wambugu as per schedule”

In pursuance to the order of 3/3/98 authorizing the Deputy Registrar to execute transfer documents, there is traced on the record transfer documents dated 12th day of March, 1998 in respect of LR. LOC 14/Kiru/54 being transferred in favour of Peter Maina Wachira and Ruth Wanjiku Wachira in equal shares.

Other on goings traced on the record are that there is presence of an application dated the 9th day of May, 2001 and filed the same date. It is brought under order XXXI of the CPR and section 56 of the laws of Succession Act. The reliefs sought are as follows:

(1) That Anne Njeri Knott be allowed to be the administratrix of the estate of Jerald Wachira Macharia in place of Ruth Wanjiku Wachira.

(2) That the orders made on 3rd March, 1998 be set aside along with the schedule of distribution filed on 25/2/1998.

(3) That costs of this application be provided for.”

The grounds in the body of the application and the supporting affidavit are to the effect that the applicant Anne Knott is the guardian and manager to the estate of Ruth Wanjiru Wachira who was alleged to have been of unsound mind; that the schedule of properties filed on the 25/02/1998 was a forgery and was meant to deprive other beneficiaries of their entitlement; that Ruth fell ill in 1996 and was unable to conduct her daily activities; the deponent has been taking care of her since her health started deteriorating; that she was completely paralyzed and could not move, talk or do anything; reliance on assistance all round and was wheel chair bound and neurological recovery was nil; that deponent had been appointed guardian of the said Ruth Wanjiku Wachira vide Misc Application No.465 of 1997; that on 6/4/2001 the deponent's brother came to the mothers residence Nairobi/Block 209/6419 and informed the deponent that he had sold the family home and required the mother to move out; that the said Peter allegedly said that one Samson Kabare had signed the transfer for him but upon inquiry from Kabare, Kabare denied signing a transfer in favour of the deponents' brother that it was in the best interests of the said Ruth Wanjiku Wachira that she continues residing in the said house. Annexed to the application was the order issued to the deponent in Misc Application No.465/97. It reads:-

“That the name of Anne Njeri Knott be and is hereby substituted as guardian and manager to the estate of Ruth Wanjiku Wachira in place of Josephine Wangare who is now deceased”

Other revelations from the documentation on the record are that one Peter Maina Wachira died and that death gave rise to the initiation of succession cause No.1492 of 2003. The temporary grant was issued on the 6th August, 2003 to one Beatrice Wairimu Maina and Gerald Martin Wachira Maina. The said grant was confirmed on the 12th day of August, 2005. The beneficiaries of this estate were indicated as Beatrice Wairimu Maina, Gerald Maina Wachira Maina, Alexander Waweru Maina and Florence Nyambura Maina. The mode of sharing was Equal. The properties affected are enumerated as here under:-

- **LR. NO. 209/6419- Nairobi**

- **LR. NO. LOC.14/Kiru/44**
- **LR. LOC.114/Kiru/1793- ¼**
- **LR. 209/786/17- 1/8**
- **LR.NO. LOC 14/Kiru/2452- whole**
- **LR. NO.14/Kiru/54-1/2 half share**
- **KTDA certificate No.B03245- whole**
- **Equity Building Society 6735-13- ¼**
- **BAT (K) Ltd-4511 and 28005- ¼**
- **ICDC share certificate Nos.13035,055687,654949- ¼**
- **Sukuma Wiki Co-Op Society Ltd shares certificate No.173-1/4**
- **EABL Certificate No.0254369- ¼**
- **Munyaka Kuna Co. Ltd share certificate No.173- ¼**
- **Kenya Breweries Ltd share certificate No.0286058**
- **KCB Golden Account No.143063380- ¼**
- **Muranga Farmers Co-op Union Ltd Savings Account No.033805374- ¼**
- **Kenya Commercial Bank Golden Account No.172244558- ¼**
- **Equity Bank Ltd Account No.05-08/45- ¼**

With regard to LR. NO.209/6419, the interest of the beneficiaries of the estate of Peter Maina Wachira was registered against the said title on 13/9/2005. There is also traced on the record documents initiated by the Deputy Registrar whose name is not indicated and which documents do not bear the court stamp which were meant to pass to the beneficiaries of the estate of Peter Maina Wachira interests in the properties which the said Peter Maina Wachirta had inherited from the estate of Gerald Wachira Macharia.

The proceedings as well as the resulting orders from the application presented by Anne Knott dated the 9th day of May, 2001 are not traced on the record. Meanwhile Ruth Wanjiku Wachira who was sought to be replaced by Ann Knott vide the application of 9/5/2001 died on the 24th day of July, 2004. This is confirmed by the presence of a death certificate issued by the Registrar Nairobi on 3/8/2004 No.BNO816625. The cause of death is indicated to have been hypertensive stroke due to Diabetes mellitus.

The death of Ruth Wanjiku Wachira paved the way for the presentation of the application by Ann Knott dated the 17th day of February, 2006. The application was presented under section 3A and order XXXVI rule 1 of the CPA (R) laws of Kenya section 76 (a) (b) & (c) of the law of succession Act cap 160 of the laws of Kenya, rule 44 and 73 of the probate and Administration Rules, section 57(1) 2(4) of the Registration of Titles Act cap 281 of the laws of Kenya. The reliefs sought were:-

(1) That this Honourable court be pleased to revoke and/or annul the grant of letters of

administration made on 23rd January, 1986 and confirmed on 7th October, 1987 together with the subsequent schedule of distribution of the deceased's estate filed in court on 25th February, 1998.

(2) That there be an order barring any registration of any dealings in respect of the land parcel known as Nairobi Block 209/6419 until the final determination of this application.

(3) That this Honourable court do proceed to determine the heirs of the estate of the deceased, Jerald Wachira Macharia and their respective shares.

(4) That the legal representatives of the estate of Peter Maina Wachira and/or their agents be restrained from disposing and/or dealing in whatsoever manner and or transferring in their own names land parcel number Nairobi Block 209/6419 pending the final determination of this application.

(5) That the costs of this applications be in the cause”

In a summary, the grounds in the body of the application are that the estate of Jerald Wachira Macharia had two administrators namely Ruth Wanjiku Wachira and Samson Kabare who did not carry out their duties as was expected of them; that this inaction lead to one Peter Maina Wachira one of the beneficiaries of the said estate of Jerald Wachira moving the court vide an application dated 11/3/97 for confirmation; that the said move was fraudulent as the same was based on a fraudulent list of distribution; that the making of the said orders of confirmation made on 3/3/98 disinherited eligible beneficiaries; that on the basis of the afore mentioned orders one Peter Maina Wachira who was a beneficiary of the same estate of Gerald Wachira caused the family property to be registered in his name; that the said Peter was also then deceased and the beneficiaries of the estate of the said Peter Maina Wachira were now threatening to dispose off the said family home; that the schedule of distribution refilled in court on 25/2/1998 had been fraudulently prepared by the said Peter Maina Wachira.

The application was supported by two affidavits. The first one came from Samson Kabare. The salient features of the same in a summary form are that the deponent is one of the administrators of the estate of the deceased Jerald Wachira Macharia; that one of the administrators Ruth Wanjiku Wachira suffered a stroke in 1996 due to hypertensive Diabetes mellitus and was unable to communicate or give instructions as a result of which the two were unable to complete the distribution of the estate of the deceased; that to his knowledge, the schedule of distribution presented to court on the 25th day of February, 1998 had been falsely prepared ; that there was no document filed in court by the deponent to support the alleged distribution; that by the time the said schedule was presented to court the co-administrator Ruth Wanjiku Wachira was bed ridden evidenced by the fact that an application had been presented by the said Peter seeking to substitute her on account of illness; that the deceased was survived by Ann Njeri Knott, Mary Wairimu Kahia, Dorcas Wanja Wachira, Millicent Wangui, Elizabeth Nyambura Wachira and Josephine Wangari Wachira all daughters, and Hezekiah Wambugu Wachira, Peter Maina Wachira and Timothy Macharia Wachira all sons save that Timothy had predeceased the deceased in 1984. The deponent goes further to depone that the six daughters of the deceased who were excluded by the alleged schedule were entitled to a share of the deceaseds' estate; the deponent is a total stranger to the said schedule; the deponent has knowledge that the deceased had all along lived on the family property LR. NO. Nairobi Block LR. 209/6419; that Peter Maina Wachira died on the 13th day of March, 2003 and his wife Beatrice Wairimu Maina and Gerald Martin Wachira Maina had taken out a grant of letters of administration intestate on the 6th day of August, 2003 which was confirmed on the 12th day of August, 2005 and the said legal representatives of Peter Maina were now threatening to dispose off Nairobi Block 209/6419 a move likely to lead the applicant and other family members suffering irreparable damage.

The second supporting affidavit of Ann Knott reiterates the deponements of the affidavit of Simon Kabare and then added that she is the eldest daughter of the deceased Jerald Wachira Macharia; the deceased Ruth Wanjiku Wachira and Samson Kabare were appointed administrators; Ruth Wanjiku Wachira suffered a stroke in 1996 and became incapacitated and could not discharge her duties as an administrator ; that on account of the said illness, the deponent devoted her life to the care of Ruth

Wanjiku Wachira; she has knowledge that the deceaseds' estate was vast; that it is only after the death of her late brother Peter Maina Wachira that she came to hear that the deceased's estate had been fraudulently subdivided and allegedly distributed; that she believes one Samson Kabare the co administrator when he depones that he had no knowledge of the purported subdivision and distribution of the estate of the deceased; that she has knowledge that one Beatrice Maina widow of Peter Maina and her son Martin Maina who have obtained a grant of letters of administration to the estate of the said late Peter Maina Wachira were making a move to dispose off the family home LR. NO.209/6419. She confirmed the list of beneficiaries to the estate of the deceased and went on to add that the alleged confirmed grant as per the schedule of distribution filed on 25/2/98 disinherited six daughters; believes the deponement of one Samson Kabare that the late Peter Maina Wachira was the master mind behind the fraudulent list of distribution.

The application doesnt seem to have been opposed save that one Beatrice Wairimu Maina put in a counter application dated the 2nd day of June,2007 and filed on the 5th day of July,2007 brought under section 45 of the succession Act, rule 73 of the probate and administration rules and section 128 of the Registered land Act. The reliefs sought included:-

(1)

(2) That the orders of this Honourable court dated 20th day of February, 2006 be reviewed, vacated or set aside.

(3) That all encumbrances and inhibitions registered against the applicant's property NO. LR.NO.209/6419 A.R.NO.19928 be removed and or cancelled.

(4) That Anne Njeri Knott do give a true and just account for the property and assets of the estate of Gerald Wachira Macharia (deceased) received by her and or in her possession.

(5) That such further or other orders this Honourable court may deem fit for the ends of justice be granted.

(6) That the costs of this summons be borne by the Respondent"

The grounds in support as contained in the body of the application and the supporting affidavit in a summary form are to the effect that the orders issued on 20th February, 2006 in pursuance to the application filed on 17/2/2006 were obtained fraudulently and illegally as they were used to lodge a caveat against the applicant's property without even serving the application and the orders on the applicant. The said application was opposed by a replying affidavit deponed on the 6th day of June, 2006 and filed the same. The grieving orders were vacated on the 20th day of June, 2006.

The vacation of the orders of 20th June, 2006 paved the way for the presentation of an application dated 4th May, 2007 and filed the same date by Ann Njeri Knott. It was presented by way of summons brought under section 45 of the law of succession Act, rule 73 of the probate and Administration rules and section 52 of the Transfer of Property Act, orders XLIV rule 1&2 of the CPR, section 3A and 80 of the civil procedure Act and all other enabling provisions of the law. The following reliefs were sought:-

(1)

(2) That the orders of this Honourable Court given on 22nd June, 2006 be reviewed, vacated and/or set aside.

(3) That any registration and/or transfer effected on LR. NO.209/6419 (L.R.19928) pursuant to the orders given on the 22nd June, 2006 and any other subsequent orders be removed and/or cancelled.

(4) That Dauglas Gachuhi Kagoiya be made a party to these proceedings as an interested party.

(5) That Douglas Gachuhi Kagoiya and or his agents be and is hereby restrained from selling, encumbering or in any other manner dealing with LR.NO.209/6419(L.R.19928) pending the hearing and determination of this summons.

(6) That Douglas Gachuhi Kagoiya be restrained from evicting and/or interfering with the quiet possession of the occupants of LR. NO.209/6419 (LR.19928) pending the hearing and determination of this summons.

(7) That such further or other orders as this Honourable court may deem fit for the ends of justice be granted.

(8) That the costs of this summons be borne by the respondents”

The grounds in the body of the application as well as the supporting affidavit are that the applicant had sought preservative orders for the preservation of LR.NO.209/6419 (LR.19928); preservative orders were indeed given in pursuance to the application dated 17/2/2006; on 20/6/2006 but were erroneously set aside and the resulting orders wrongly extracted; that the said orders were made on a mention date; that the respondents took advantage of the erroneous lifting of the said order to transfer the suit property to a 3rd party; that justice demands that the said 3rd party be made a party to these proceedings and be restrained from divesting himself of the said property pending the disposal of these proceedings.

Meanwhile the application for revocation of 17/2/2006 was disposed off on 15/5/2007 and allowed. A fresh grant was ordered to be issued in the names of **Ann Njeri Knott and Elizabeth Nyambura** jointly and on 4/7/2007 orders were given to prevent eviction from LR.No.209/64/9 an extracted grant was duly issued in the joint names of the two on the 15th day of May, 2007.

The issuance of the grant in the joint names of Ann Njeri Knott and Elizabeth Nyambura paved the way for the presentation of an application dated the 16th day of May, 2007 and filed on the 16th day of May, 2007. The reliefs sought are as follows:-

(1) That this Honourable court be pleased to issue an order preserving the following assets of the estate of the deceased.

- (a) LR. NO.209/6419**
- (b) LR. No.209/6008**
- (c) LR. No. 209785/17**
- (d) LR. No.209/2716**
- (e) LR. No.Loc.14/Kiru/1965/6**
- (f) LR. No.LOC. 14./Kiru/1965/54**
- (g) LR. No.Loc.14/Kiru/44**
- (h) LR. NO.Loc.14/Kiru/2725**
- (i) LR. NO. Loc.14/Kiru/2732**
- (j) Title No. Loc.14/Kiru/1751**
- (k) LR. No. Loc.14/Kiru/1293.**

Shares

(a) Kenya Breweries certificate Nos.0320022-0286058 certificate Number 0254369.

(b) B.A.T. Kenya Ltd- Ordinary certificate number 451.

(c) I.C.D.C. Investment Co. Limited- certificate number 13035.

(d) Equity Building Society investment certificate No.6735-13 and 0729-13

(e) Munyaka Kuna Co. Limited- certificate No.173.

(f) Sukuma Wiki Co-operative Society certificate No.173.

(2) That there be an order cancelling the transfer of LR. No. 209/6419 (IR 19928) to Douglas Kagoiya Gachuhi which was registered on 15th December, 2006 and Anne Njeri Knott and Elizabeth Nyambura be registered as the administrators of the property LR. No. 209/6419 (I.R.19928).

(3) That there be an order restraining Douglas Kagoiya Gachuhi from transferring, charging and/or in any other manner dealing with the deceased's' property LR. No.209/6419 (I.R. 19128) pending distribution herein.

(4) That costs of this application be in the cause.

The application was anchored on the grounds in the body of the application, content of the supporting affidavit deponed by Anne Njeri Knott and in a summary deponed that the two applicants were now the appointed administrators of the estate of the deceased following the revocation of the original grant which had been issued in 1986 to Ruth Wanjiku Wachira and Samson Kabare had been revoked on 15th May, 2007. That the deceased had died on the 17th July,1985; the first grant had been procedurally issued to Ruth Wanjiku Wachira and Samson Kabare but was never confirmed in their names; that one Peter Maina Wachira took advantage of the mental illness of their deceased mother and had the grant confirmed in their names; that thereafter Peter purported to distribute the estate in accordance with the schedule which had been filed in court on the 25th February,1998; that by reason of the said Peter Wachira having purported to distribute the estate, it was necessary to have restraint orders preserving the said properties to prevent the beneficiaries of the fraudulent confirmation of grant divesting themselves of the said property in order to make them out of reach of the other beneficiaries left out of the purported distribution; that particularly LR. No.209/6419 (IR 19929) where the deceased's' family resides should be protected so that they are not evicted from there from. Preservative orders were duly issued to that effect on the 15th day of May, 2007 and extracted on the 17th day of July, 2007.

The granting of the afore stated orders prompted the filing of an application by way of summons for review brought under section 97 of the law of succession Act, rules 63 and 73 of the probate and administration rules and order XLIV rules 1&2 of the CPR, section 3A&80 CPA and all other enabling provisions of the law. The application was supported by the grounds in the body of the application and the supporting affidavit of one Daniel O. Owang. In a summary, all that the application sought from the court was an order that the grant issued to Anne Njeri Knott and Elizabeth Nyambura on the 15th day of May, 2007 had been issued after the initial grant issued to Ruth Wachira and Samson Kabare on the 23rd January, 1986 had been revoked.

There followed presentation of another application by one Winnie Wangui Macharia dated the 15th day of August, 2007 and filed on the 16th day of August, 2007. The application is brought by way of chamber summons among others under order XXXIX rules 1, 2, 3 CPR, section 45 and 76 of the law of succession Act cap 160 laws of Kenya and rules 44 and 73 of the probate and administration rules. Five reliefs were sought namely:-

(1) Spent

(2) Spent

(3) That Ann Njeri Knott and Elizabeth Nyambura be restrained from purporting to act as administrators of the Estate of Gerald Wachira Macharia and from harassing or interfering with or threatening the tenants of Winnie Wangui Macharia in plot No.Loc.14/Kiru/1965/6.

(4) That the said Anne Njeri Knott and Elizabeth Nyamburas' names be deleted from a grant of letters of Administration of the estate of the said Jerald Wachira Macharia dated 15th May, 2007 and this Honourable court vest the Administration of the said estate in the Registrar as ordered on

the 10th day of March, 1998.

(5) That the costs of this application be provided for.

The application was anchored on the grounds in the body of the application as well as the content of the supporting affidavit deponed by Winnie Wangui Macharia. In a summary, these are that the proceedings relate to the estate of one General Wachira Macharia; the initial grant of representation had been issued to the deceased widow Ruth Wanjiku Wachira and Samson Kabare; on 11th day of March, 1997 the applicant Winnie Wangui Macharia Jane Wanjiru and Peter Maina Wachira applied to have the said initial grant of letters of administration revoked; the said application was opposed by Josephine Wangare but the same was granted where by the Deputy Registrar was directed to execute the documents to effect the distribution of the estate in accordance with the schedule which had been filed; that according to her, the entire estate had been distributed and what was left was the estate which had been shared out to the widow of the deceased Ruth Wanjiku Wachira; who died on the 24th day of July, 2004; that she has knowledge that one Anne Njeri Knott benefitted from land parcel No. Loc.14/Kiru/3379 where she had been awarded 2.02 ha in a plot now renamed Loc.14/Kiru/4136, according to the deponent, the two are not properly vested with the administration of the estate by any court order; that the source of complaint arises because the two namely Anne Njeri Knott and Elizabeth Nyambura were engaged in acts of harassment and threats to deponents tenants in plot number Loc.14/Kiru/1965/6 in Kiriaini Market Muranga North; that there is a genuine grievance which entitled the deponent to the reliefs sought namely a cancellation of the order granted to Anne Njeri Knott and Elizabeth Nyambura.

The said application of one Winnie Wangui Macharia was responded to by a replying affidavit deponed by one Anne Njeri Knott on the 15th day of October, 2007 and filed on the 8th day of October, 2008. In a summary, there is contention that Timothy Macharia Wachira deceased husband of Winnie Wangui predeceased the deceased subject of these proceedings as he had died on the 4th day of September, 1984 where as the deceased subject of these proceedings died on the 17th day of June, 1985; that neither the deponent nor the other four (4) sisters gave authority to the late Josephine Wangare to depone an affidavit in opposition to the application which had been filed by Winnie Wangui and Peter Macharia seeking revocation of the grant which had been issued to Ruth Macharia and Samson Kabare; that the said Josephine Wangari had no capacity to swear the said affidavit; that the order of 11th March 1997 only authorized the Deputy Registrar of the court to sign the necessary documents for the distribution of the estate but the beneficiaries of the estate were not told how the mode of distribution had been arrived at and who spear headed the same; that since the widow of the deceased had been incapacitated and one Samson Kabare one of the other co-administrators with the widow was not put in the picture, the said distribution of the estate was done fraudulently; that the schedule of distribution approved by the Honourable court on the 10th March, 1998 did not have the blessing of all the beneficiaries and was therefore done fraudulently; that the deponent Ann Njeri Knott and her other four sisters did not benefit from the distribution of the said estate; denied allegations of harassment of the applicants tenants but conceded to have informed the tenants that she was now the administrator of the estate of the deceased; that instead it is the applicant Winnie Wangui Macharia and Beatrice Wairimu Maina who had roughed the deponent Anne Njeri Knott; that the orders vesting the deponent with a grant of representation were still valid; that no valid distribution took place as the other original administrator namely Samson Kabare deponed and gave evidence in court to the effect that he never gave his consent to the distribution of the estate.

Winnie Wangui Macharia responded to the replying affidavit of Anne Njeri Knott of 8/10/2007 afore set out above vide her own reply to the replying affidavit deponed on the 9th day of October, 2007 and filed on the 11th day of October, 2007. In a summary, it is deponed that the said Anne Njeri Knott is aware that the applicant Winnie Wangui Macharia is a widow to her own deceased brother and therefore a beneficiary of the estate of Gerald Wachira; that Anne Njeri Knott, was aware that she Winnie Wangui Macharia, Jane Wanjiru wife of Hezekiah Wambugu Wachira, and Peter Maina Wachira had applied to revoke the initial grant which had been issued to one Ruth Wachira and Samson Kabare; that she deponent had knowledge that one Samson Kabare had deponed an affidavit supporting the revocation of the initial grant; that the record will show that the court ordered the applicants of the application for

revocation to furnish the court with a schedule of distribution which they did on the 25th day of February, 1998 but there was no objection or counter schedule by Josephine Wangare who deponed that she had a power of Attorney on behalf of Ruth Wachira; that in the absence of any objection, the court had no alternative but to approve the schedule which had been furnished to it; that since all the daughters of the deceased were married except Elizabeth Nyambura, under Kikuyu customary law only Elizabeth Nyambura could be catered for; that the said Elizabeth should have been catered for from the ¼ of the estate which had been distributed to the widow Ruth Wanjiku Wachira; that Samson Kabare was aware and participated fully in the deponents application for revocation; maintained that Anne Njeri Knott, Mary Wairimu Kahia, Millicent Wangui Wachira, Dorcas Wanja Wachira all married daughters of the deceased and Anthony Wachira Gerald a son of Anne Njeri Knott have been registered as joint owners of land parcel number Loc.14/Kiru/3379; that that the grant purportedly issued to Anne Njeri Knott and Elizabeth Nyambura was issued in error in contravention of section 67 of the LSA and the same should not be allowed to stand.

The applicant of the application of 6/8/2007 Winnie Wangui Macharia filed on other affidavit deponed on the 5th day of November, 2007 and filed on the 6th day of November, 2007. In a summary, reiterated her earlier deponements that proceedings herein relate to the estate of her late father in law Gerald Wachira; confirmed that indeed the initial grant herein was issued to one Ruth Wanjiku Wachira and Samson Kabare following a petition lodged by the two on the 17th day of October, 1985 which was issued to the two on the 17th day of October, 1985; that on the 7th day of October, 1987 the said grant was confirmed with regard to

**LR. Loc.14/Kiru/1965/6–Muranga,
LR.Loc14/Kiru/54-Muranga
LR.Loc.14/Kiru/44-Muranga and**

LR. Loc. 14/Kiru/1793-Muranga. All these were to be distributed to Ruth Wanjiku Wachira to hold in trust for all her children; that the deponent has knowledge that thereafter Ruth Wanjiku assumed the sole administration of the estate of the deceased to the exclusion of the co administrator and had most of the estate properties transferred into the name of Ruth Wanjiku Wachira and no distribution of the estate to the beneficiaries was done; that the deponent has knowledge that in the year 1996 Ruth Wanjiku Wachira suffered a stroke and was unable to discharge her functions and purported to donate a power of Attorney to one of her daughters Josephine Wangare which Josephine purported to solely administrator the estate to the exclusion of the co administrator and went to the extend of presenting an application dated the 5th day of February, 1997 purporting to remove the co-administrator from the administration of the estate; that the action of the said Josephine Wangare brought chaos and discord amongst the beneficiaries prompting the deponent Winnie Wangui Macharia, Peter Maina Wachira, and Jane Wanjiru Wambugu to apply to the court vide an application dated 11th day of March 1997 seeking orders of the court to be appointed co-administrators with Samson Kabare and revoke the appointment of Ruth Wanjiku Wachira; that on the 23rd day of May, 1997 the three named above applied for restraint orders to restrain one Josephine Wangare from purporting to act as an administrator; that during the pendency of the hearing of the application for revocation on 30th day of July, 1997, the court directed one M/S Mbugua & Co. advocates to cause Ruth Wanjiku Wachira to transfer the properties to the beneficiaries failing which the Deputy Registrar of this court to sign the same on behalf of Ruth Wanjiku Wachira and when she failed to do so the same court made an order on the 15th day of November, 1997 ordering that the transfer documents be signed by the Deputy Registrar of the court; that when the said order was challenged on 25th February, 1998 it was ordered that each party do furnish a schedule as to how the estate could be distributed; the interested parties filed a schedule, Ruth did not file any and the court approved the interested parties schedule on 3/3/98; following the courts approval of the said schedule on the 3/3/98, the estate was distributed to Ruth Wanjiku Wachira, Peter Maina Wachira, Jane Wanjiku Wambugu and Winnie Wangui Macharia with the assistance of the Registrar of the court and Mr. Samson Kabare; that by reason of the historical background laid out by Winnie Wangui Macharia above, it is the deponents contention that the deceaseds' estate was distributed in accordance with the orders of the court and under the supervision of the court; that the same was lawfully and regularly done without any fraud, misinformation; that the deponent had knowledge that notice of appeal was filed against the orders of

5/11/1997 and the orders of 3/3/98 which were never pursued.

Anne Njeri Knott filed a further replying affidavit deponed on the 16th day of November, 2007 and filed on the same date. In a summary; contended that she is a co-administrator of the deceaseds estate, confirmed the enumeration of the children of the deceased and that all the sons and one daughter were now deceased at that time; that only four properties were named in the schedule for confirmation in the confirmation made on 7th October,1987, all of which were confirmed in the names of Ruth Wanjiku Wachira; she has knowledge that her deceased mother wanted to distribute the estate to all her children but the sons turned down the request arguing that the daughters should not get a share of the deceaseds' estate; confirmed that Ruth Wanjiku Wachira suffered a stroke in the year 1996 which incapacitated her completely forcing the deceased Josephine Wangare to seek guardianship orders vide HCCC No. CCC Misc Cause No.465 of 1997 and when Josephine died, the deponent Ann Knott was substituted in her state; that the authority to take care of the estate on behalf of Ruth Wanjiku Wachira ended when Ruth died; conceded that by reason of the stroke suffered Ruth Wanjiku was unable to give any power of Attorney to the deceased Josephine; concedes that the purported power of Attorney by Ruth Wanjiku Wachira to Josephine was invalid; that by reason of the afore stated inability, Ruth Wanjiku Wachira was unable to liase with Samson Kabare over administration of the estate or to give an effective power of Attorney; that the application of 11th March,1997 where in Winnie Wangui Macharia, Peter Maina Wachira and Jane Wanjiru Wambugu seeking revocation of the grant issued to Ruth Wanjiku Wachira and Samson Kabare was presented without consultation of other beneficiaries; that the move of the afore said applicants sole intention in presenting the said application was solely to exclude other beneficiaries from their inheritance; that by reason of the disability suffered by Ruth Wanjiku Wachira any action done on her behalf was a nullity; that the interested parties took advantage of the disability of Ruth Wanjiku to present a schedule of properties favouring them and went a head to secure illegal orders to transfer property to 3rd parties including the family home.

There is also in place an affidavit by one Beatrice Wairimu Maina deponed on the 30th day of Janaury, 2008, and filed the same date. In a summary, it is deponed that she was a widow of one Peter Maina Wachira a late son of the deceased subject of these proceedings; confirmed her late husband was one of those who presented an application on 11/3/97 seeking revocation of the grant which had been issued to one Ruth Wanjiku Wachira and Samson Kabare; the action was prompted by the fact of late Josephine Wangare taking sole control of collection of rents from the deceaseds' property; that orders in respect of the said application were issued on the 3rd day of March,1998 distributing the entire estate using a schedule which had been filed in court; that all beneficiaries of the deceased's estate were aware of that; that as far as she was concerned the shares of her deceased husband Peter Maina Wachira was properly presented to him; that upon his death she took a grant of representation to his estate on the 13th day of March,2003 which was subsequently confirmed on the 12th day of August 2003; that only properties her deceased husband had received from the estate of Jerald Wachira accordingly distributed to the beneficiaries of the estate of Peter Maina Wachira; maintained that Anne Njeri Knott , Elizabeth Nyambura and one Joseph Mwangi Kabare invaded her on LR.Loc.14/Kiru/1965/44 and harassed her and her children purporting to do so under authority of a grant of representation; the trio went further to sue the deponent and her children with regard to the recovery of LR.209/6419 which action was subsequently withdrawn with costs to her; the person complained of went further to collect rents from properties belonging to the estate of late Peter Maina Wachira to the exclusion of the deponent and her children; that she has all along been subjected to harassment and threats of violence; it is her stand that the grant of representation to Anne Njeri Knott and Elizabeth was not for purposes of administering the estate but for purposes of harassing beneficiaries . Lastly that under Kikuyu customary law d Anne Njeri Knott, Millicent Wangui and Dorcas Wanja as married daughters of the deceased cannot inherit the estate of the deceased.

There is also an affidavit by one Julius Macharia Kahumbi deponed on the 31st day of January,2008 and filed on the 1st day of February,2008 in which it is deponed that he was present in the home of late Ruth Wanjiku Wachira where the said late Ruth Wanjiku Wachira allocated land IR.209/6008 to Jane Wambugu, LOC.14/Kiru/1965/44 was allocated to Peter Maina Wachira and the late Ruth Wanjiku Wachira in equal shares and then late Ruth wanjiru Macharia, late Peter Maina Wachira

and Jane Wanjiru Wambugu were allocated 8.5. Acres out of LR. No. Loc.14/Kiru/3379; that the said sharing was as per the agreement exhibited.

Anne Njeri Knott put in a further replying affidavit deponed on the 25th day of February, 2008 in response to the affidavit of Beatrice Wairimu Maina and in a summary deponed that one Samson Kabare had deponed an affidavit and gave evidence in court to the effect that he was not aware of the interested parties application of 11/3/97, still maintains that the application of 11/3/97 was not presented in good faith; that the said Kabare stated clearly that at no time had he ever been involved in the administration of the deceaseds' estate; still maintains that the deceased Ruth Wanjiku Wachira was incapable of discharging her duties as an administrator after she suffered a stroke and as such she was not in apposition to give instructions to any lawyer with regard to the administration of the estate; that the deponent and her sisters had no knowledge leading to the making of the orders of 3/3/98; that the distribution of the estate vide the orders of 3/3/98 did not have the blessing of the administrators of the estates; that she was entitled to apply for the revocation of the grant because the distribution of the estate did not have the blessings of the administrators of the estate and beneficiaries; that the distribution of 3/3/98 only benefited Winnie Wangui , Peter Macharia and Jane Wanjiru to the exclusion of the six daughters who were beneficiaries; contends that late Peter Maina illegally acquired the parents home LR. NO.209/6045; that the deponent learned of this illegality when Beatrice Maina applied to get a provisional title, denied allegations of harassment leveled at her. All she did was to introduce herself to the tenants as the new title holder; that the sole purpose of collecting rent from the tenants was solely for purposes of carrying out repair on the estate property; as at the time of deponing the affidavit under review, the grant which had been issued to them on the 15th day of May, 2007, was still operational; that instead it is the interested parties who had threatened to kill the deponent; that a bigger portion of the estate property went to Peter Maina who sold them namely withdrew all the money from all the bank accounts, sold all the shares invested in various companies, i.e Kenya breweries, ICDC investment, EABC, Bat Kenya, Sold LR. No.209/6045 Nairobi, sold Loc.14/Kiru/2738 Muranga, sold a portion of LOC.14/Kiru/3376 measuring 85 acres.

There is also on record an affidavit of one Harun Wambugu Wachira deponed on the 25th day of February, 2008 and in a summary, denied the content of the affidavit of Julius Macharia Kahumbi; denied allegations that he was present when the estate was being shared out as alleged; he was a stranger to the allegations that the deceased would have wished his daughters to be disinherited. According to the deponent, the deceased Gerald Wachira cared for all his children and would have wished them to inherit his property; maintained that the alleged agreement of distribution of the estate was a fabrication considering that not all the children of the deceased attended the alleged meeting where the distribution was done; that the persons alleged to have been present inclusive of the deponent did not sign the said agreement and no explanation was given as to why they did not sign despite their presence; that the schedule of property which was tendered in evidence did not agree with the alleged agreement of distribution; that in the premises, the said agreement should be disregarded; that to the deponents knowledge the deceased left no will disinheriting his daughters the deponent has knowledge that the deceased did not conform to the Kikuyu tradition on inheritance as he gave a five acre pieces of land to his sister during his life time; that in the premises the affidavit of Charles Kahumbi is nothing but false hoods and it should be disregarded.

Turning to the entries made by the court, there is an entry for the grant of letters of administration issued by Joseph Butler Sloss on the 7th day of October, 1987 to Ruth Wanjiku Wachira and Samson Kabare; other relevant entries regarding the transactions undertaken by the parties on the file are missing due to mutilation either intentionally or in advertently. The next relevant entry on the record is the entry made by Rawal J as she then was (now JA) now JA on 18/05/2009. It runs as follows:-

“Court: after discussion, it is agreed that the grant of representation dated 15th May, 2007 is revoked as there has been undue wrangling among the family members. A rectified grant in the names of the counsels be issued so that they can identify, collect and collate the assets of the estate, income if any of the estate and liabilities thereon. They should also identify if any of the beneficiaries has received any share of the estate income. The beneficiaries are agreed but should

be listed appropriately”

The order of Rawal J as she then was afore said, gave rise to the grant issued on the 18th day of May, 2009 and extracted on the 22/6/2009 which is the current operational grant subject of these proceedings.

It is against the afore set out background information that the current applicant Beatrice Wairimu Maina has approached the seat of justice and presented the application subject of this ruling dated the 16th day of February,2009 and filed on the 12th day of March,2009. The application was presented under sections 47, 73 and 83 (e) of the law of succession Act and rules 49 and 73 of the probate and administration rules. Five reliefs are sought namely:-

- (1) That this matter be certified urgent and be heard exparte in the first instance.**
- (2) That a reasonable provision be made out of the assets or income of the estate for the living expenses.**
- (3) The administrators do produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full account of all dealings there with upto the date of the account.**
- (4) That the administrators be ordered by this honourable court to apply for the confirmation of the grant issued by this court on 15/5/2007 forthwith.**

The application is supported by the grounds in the body of the application and content of the supporting affidavit deponed by Beatrice Wairimu Maina. The salient features of the same are that the applicant is in dire need of subsistence which she seeks to have provided to her from the income of the estate; that the administrators have been collecting rental income and dividends and they also have access to the bank accounts, yet they have not provided an account as required by court. On the issue of eligible beneficiaries, it is deponed that the deceased had been predeceased by one Timothy Macharia Wachira who had died on the 4/09/84 leaving behind a widow and seven (7) children. Those who survived the deceased were named as the widow Ruth Wanjiku Wachira, and children Ann Njeri Knott, Mary Wairimu Kahia, Dorcas Wanja Wachira, Millicent Wangui, Elizabeth Nyambura, Josephine Wangare, Peter Maina and Hezekiah Wambugu Wachira. As at the time of making of the deponement Ruth Wanjiku Wachira the widow, Hezekiah Wambugu and Peter Maina Wachira had died. Hezekiah Wambugu had died leaving behind a widow and four children. Peter Maina Wachira had also died on 3/3/2003 leaving behind the deponent as his widow and four children named as Jerald Wachira, Alex Waweru, Ruth Wanjiku and Florence Nyambura.

With regard to the properties forming the estate those listed comprise what has been deponed and asserted else where as the estate property namely:-

LR. NO.LOC.14/Kiru/1965/6, LR. NO. LOC.14/Kiru/54, LR. NO. LOC.14/Kiru/44, LR. NO. LOC.14/Kiru/1793, LR. NO. LOC.14/Kiru/2725,LR. NO.LOC.14/Kiru/1751,LR.NO.LOC.14/Kiru/8971,LR.NO.LOC.209/6419,LR.NO.209/6045/Original,LR.209/4844/107,LR.209/6008,LR.NO.209/2716,LR.NO.LOC.14/Kiru/2732 , KD Investment Co. LTD shares certificates numbers 28005, 13035,055687 and 654948,East African Breweries Ltd shares certificate number 0254369,Munyaka Kune Co. Ltd share certificate number 173,Sukuma Wiki Co-Operative society Ltd. Share certificate number 173,B.A.T. Kenya LTD share certificate number 4511,Equity Building investments share certificate numbers 6735-13 and 6729-13,Kenya Breweries Ltd share certificate numbers 0320022 and 6286058,Kenya Commercial Bank LTD Golden account number 172244558,Equity Society savings Accounts number 05-68145,Muranga Farmers Co-operative Union Ltd Savings Accounts number 0338-05374 and Kenya Commercial Bank LTD Golden account number 143.063.386.

With regard to current usage of the properties by the beneficiaries the deponent has gone further to depone that her residence which is also her matrimonial home is located on LR. NO.LOC.14/Kiru/44.

That income generating properly forming the estate are (b) LR.NO. LOC.14/Kiru/54. (h)LR.NO.209/6419 (J) LR. NO.209/6008 AND (K) LR. NO.209/2716. It is further the deponent's assertion that dividends are paid on all the shares listed and are collected by the administrators. The deponent goes further to state that income on LR. NO.209/2716 is collected by a professional agent comprising M/S Gim Co. Limited; that rental income collected by the said agency since July,2007 upto December,2008 had been shared out with the deponent getting 1/8 as per the orders in HCCC Number 619/2005. It is the deponent's contention that she should have been given $\frac{1}{4}$ of the said income because as at the time of the deceaseds' death all the daughters were married except Elizabeth Nyambura. Also confirmed that the other widows of the other deceased sons namely Jane Wanjiru Wambugu. Regarding the background history of the matter, it is the deponents contention that the grant which had been issued to Ruth Wanjiku Wachira and Samson Kabare on 24/01/86 was confirmed on the 7/10/87 and followed up with a schedule filed on 25/2/98 where in the estate was to be shared on $\frac{1}{4}$ basis to Ruth Wanjiku Wachira (widow then deceased) Winnie Wangui Macharia (widow) to Timothy Macharia a son to the deceased, Peter Maina Wachira late husband of the deponent and Jane Wanjiru Wambugu widow of Hezekiah Wambugu Wachira a son to the deceased. It is the deponents stand that the said estate should now be shared out into 4 so that she gets $\frac{1}{4}$ share of the estate. The deponent went on to complain further that upon Anne Njeri Knott and Elizabeth Nyambura being issued with a grant of representation to the deceaseds' estate issued to them on 15/05/2007, they divested the entire estate from the hands of the other dependants and beneficiaries and they have totally deprived them of a livelihood and subsistence. Further source of complaint from the deponent is that a search carried out on LOC.14/Kiru/1965/44 which is her matrimonial home revealed that the said property was then registered in the names of the administrators although the grant issued to those administrators had not been confirmed. Lastly that she was in dire need of financial support as she was not in any gainful employment; that she has children to take care of; that the administrators then on board had not applied for confirmation of the said grant and distribution of the estate as required by law; that LR. No. LOC14/Kiru/1965/54 is a petrol station and upon inquiry from the proprietors with regard to rental payment, she was informed that Anne Njeri Knott had been receiving the rent; reiterated that the then administrators on board had assumed collection of all rental income and were now depriving the other beneficiaries of the same hence her move to seek the intervention of the court; that according to her she had made out a case to entitle her, to the relief sought.

Among the annexures annexed in support of the deponent's assertions are an order in HCCC 619/2005 dated 15th day of January, 2009 whereby 50% of rental proceeds from LR. NO.209/783/17 were to be shared into two equal portions and 50% of the said proceeds were to be paid to Wachira Ndungu Advocates for distribution to the beneficiaries of the estate of Jerald Wachira Macharia a communication from Gim Co. Limited dated 23rd January, 2009 to Wachira Ndungu & Co. Advocates among others forwarding cheque No.108368 for Kshs.1,974,007.90 for distribution to the beneficiaries of the estate of Jerald Wachira Macharia, a statement of accounts in respect of Agency of Gimco Limited to the suit property, a copy of grant issued on the 15th day of May,2007 to Anne Njeri Knott and Elizabeth Nyambura; an official search on Loc.14/Kiru/1965/44 indicating that indeed the said title had been transferred into the names of Anne Njeri Knott and Elizabeth Nyambura and a restriction placed on activities to be carried on, on the said portion.

The afore set out application for provision of a dependent by Beatrice attracted a replying affidavit from Jane Wanjiru Wanbugu deponed on the 15th day of March, 2009 and filed on the 18th day of March,2009. The salient features of the same in a summary form are that she had appointed the firm of T.T.M. Aswani as her advocate; the said appointment was effective on the 17th day of December,2008, that the sole purpose of the said appointment was for purposes of having the said advocate protect the interests of the deponents family which had been affected by the issuance of an erroneous grant of representation to the estate of the late Gerald Wachira Macharia to one Ann Njeri Knott and Elizabeth Nyambura on 15/05/2007; that the said issuance of the grant and appointment of the afore mentioned administrators was in contradiction with the court orders which had been made on the 3rd day of March,1998 and thereafter executed by the court in favour of the beneficiaries of the estate of the late Jerald Wachira Macharia. Lastly that she the deponent supports fully the summon filed by Winny Wangui Macharia on the 16th day of August 2006, to set aside the said offending grant.

There is also on record a replying affidavit deponed by one Winny Wangui Macharia on the 17th day of March, 2009 and filed on the 18th day of March, 2009. The salient features of the same are that she reiterates to be the applicant in a pending application dated 16th day of February 2009 seeking to prevent Anne Njeri Knott and Elizabeth Nyambura from purporting to act as administrator of the estate of Jerald Wachira Macharia and 2ndly to stop harassing or interfering with or threatening the tenants of Winnie, Wangui Macharia; that the said application was pending both direction and hearing and disposal; that she has knowledge that Beatrice Wairimu Maina who has applied for a provision for a dependant is a party to the application of Winnie Wangui Macharia; the deponent also has knowledge that the said Beatrice Wairimu Maina has also appointed T.T.M. Aswani Esq Advocate also as her advocate; that the said T.T.M. Aswani is also the advocate of Winnie Wangui as well as Jane Wanjiru Wambugu. Lastly that prayer 4 being sought in the application for provision for a dependant by Beatrice Wairimu Maina if granted will jeopardize her prayers in her application dated 16/3/2006 which was still pending. In the premises, she prayed that the application of 16/3/2006 should be heard a head of the application for provisions of a dependant.

In response to the application for provision for a dependant filed by Beatrice Wairimu Maina dated 16th February, 2009 Anne Njeri Knott put in a replying affidavit deponed on the 15th day of May, 2009 and filed on the 18th day of May, 2009. The salient features of the same in a summary form is that she concedes that the deponent and Elizabeth Nyambura were indeed appointed administrators of the estate of the late Jerald Wachira Macharia on 15/5/2001; that the two replaced the appointment of late Ruth Wanjiku and Samson Kabare; confirmed the deponement of Beatrice Wairimu that the beneficiaries of the estate of the said deceased as at the time they were made were Anne Njeri Knott, Mary Wairimu Kahia, Dorcas Wanja Wachira, Milicent Wangui Wachira, Elizabeth Nyambura Wachira all married daughters of the deceased. In addition are Beatrice Wairimu Maina, Winnie Wangui Macharia and Jane Wanjiru Wambugu all indicated to be daughters in law being widows of deceased sons of the deceased. The deponent went on further to depone that it is not true that their sisters in law were not aware of the processes they used to get the deponent and her sister to be appointed as administrators as the said process was open and the sisters in laws filed papers in opposition to that process and as such it is not true that the grant was obtained by the deponent and her sister without their knowledge; that the applicant cannot seek consents from the deponent and they at the same time she is party to the application for revocation; denied harassment of tenants and their sisters in laws as all that she recalls is that upon being issued with the grant the deponent and her co-administrators embarked on the exercise of identifying the assets of the deceaseds' estate which had not been sold off for purposes of distribution to all the beneficiaries; that instead it is her sisters in law who harassed and threatened her and the co-administrators; that one such incident was in the month of September 2007 when the deponent was attacked by Beatrice Wairimu and her children in the cause of her taking an inventory of the deceaseds' assets in Muranga. The deponent goes further to reiterate that Winnie Wangui one of her sisters in laws instructed her lawyers who warned the deponent in writing not to intermeddle and or administer the estate of the deceased; that the advocate of Beatrice Wairimu and Winnie Wangui also wrote to Kiriani police station informing them that the deponent and her co-administrator were not administrators but were just purporting to be administrators; that by reason of the opposition encountered by the deponent and her co-administrators from the sisters in law, it had been difficult for them to make an inventory of the deceaseds' assets and liabilities. The deponent confirmed that indeed a sum of Kshs.1,974,007/98 had been received for the benefit of the beneficiaries of the estate of the deceased from the managing agents namely MS Gimco limited denied allegations that she the deponent and her co-administrator had been receiving income from the deceaseds' properties and more particularly income from the petrol station on LR. No. Loc.14/Kiru/1965/54 since the proprietors of the said petrol station declined to release any information concerning the income generated by the said station or the resulting income until the issue of administratorship of the estate had been sorted out; denied transferring any of the deceaseds' assets to 3rd parties.

The annexures to the afore said replying affidavit comprised the affidavit of Beatrice Wairimu Maina filed on 30th January, 2008, P3 in favour of the deponent issued by the OCPD Kiriani police station on 9/9/2007, medical report from Kiriani mission hospital in respect of the deponent which indicates clearly that the deponent sustained injuries and indeed received treatment from the said hospital.

There are two communications from T.T.M. Aswani advocate dated 26/07/2007 and 14/8/2007, one addressed to the firm of Peter Mutisya & Co. Advocates who was then on record for the deponent and another one addressed to the officer in charge Kiriaini police station. There is also communication from Wachira Ndungu & Co. advocates dated 30th July, 2007, and 16th August, 2007 addressed to Peter Mutisya & Co. Advocates who was then acting for the deponent and the officer in charge Kiriaini police station. The message in the content of the communication to Peter Mutisya & Co. Advocates is to the effect that his clients had taken over an estate which had already been distributed while that one addressed to the police station was to the effect that the purporting administrators were not infact administrators. Lastly annexed are documents relating to the accrued income to the deceaseds' estate from LR. No.209/2716 and LR. No.209/783/17.

There is also in place an affidavit by Jane Wanjiru Wambugu deponed on the 23rd day of November, 2010 and filed on the 25th day of November, 2010. The salient features of the same in a summary form are that she is widow of Hazekiah Wambugu Wachira son of the deceased subject of these proceedings; she has personal knowledge that during the life time of the deceased her late husband benefited from the following properties of the deceased namely:-

LR.Loc.No.19/Nyakianga/1024,LR.NO.Loc.14/Kiru/3379,LR.NO.Loc.14/Kiru/4135,LR.No.Loc.14/Kiru/272,LR.NO.LOC.14/Kiru/2722,LR.No.209/6008,LR. No.209/6045 and NCC House-Jericho Lumumba No.AB3-5841.

The deponent went on to depone that at the time of death of her late husband only property number LR. Loc.19/Nyakianga/1024 had been transferred in the deceaseds' name; she has knowledge that upon the demise of the deceased subject of these proceedings, a grant of representation was indeed issued to the widow late Ruth Wanjiku Wachira and Samson Kabare; that at first, confirmation was made with all properties vesting in the widow Ruth Wanjiku Wachira to hold in trust for all her children; that she has knowledge that thereafter other properties of the deceased were discovered and included in the confirmation by subsequent court orders; that as at 1996 the widow had not distributed the estate' she suffered a stroke in that same year and was unable to discharge the functions of an administrator where upon her late daughter Josephine Wangare purported to act on her behalf at the exclusion of the other beneficiaries; that it is the move by Josephine Wangare which prompted the deponent Winny Wangui Macharia and Peter Maina Wachira to file the application for revocation filed on the 11th day of April,1997 seeking to be appointed as co administrators and with the deceased , widow, parties were invited to file schedules of distribution which her group did but Josephine Wangare group never did; that on 3rd March,1998 the court through Kuloba J as he then was approved their mode of distribution. The deponent goes further to depone that according to the said order, the deponents' share entitlement comprised properties LR.LOC.14/Kiru/4135- 8.5ha,LR.NO.209/785/17 (original LR. 209/785/611-One eighth share, LR. No.209/2716- one eighth share, Lr.Loc.14/Kiru/2725 one quarter; LR Loc.14/Kiru/2732- one quarter, one quarter share of shares in ICDC Investment Limited, EA Breweries Limited, Munyaka Kuna Company Limited, Sukuma Wiki Cooperative Society, BAT(Kenya) Limited, Equity building society, Kenya Breweries Ltd, Kenya Commercial Bank, Golden Account number A/C 172244558, Equity building Society savings A/C, Muranga Farmers Cooperative Union savings A/C and Kenya commercial Bank Limited Golden A/c No.143063386. that by reason of the afore stated orders she was able to be vindicated by being enabled to recover the following properties which had initially either been given or earmarked for the benefit of her deceased husband namelyLR.Loc.19/Nyakianga/1024, LR.Loc.14/Kiru/2721, LR.Loc.14/Kiru/3379,LR.Loc.14/Kiru/2732, LR.No.209/2008,LR.Loc.14/Kiru/4135 above. The deponent also confirmed that she had been given LR. NO. Kiru/2725 and LR. Loc.14/Kiru/2725. That she is yet to get LR. NO. 209/6045 Mbotela and NCC House No.AB3 Jericho/Maringo which had been taken by the late Peter Maina Wachira, LR. No.209/6045 by Mary Kayia/NCC House No.AB3-Jericho Lumumba. The deponent goes on to depone further that she has disposed off LR. No.19/Nyakianga/1024 and utilized the proceeds for the Education and other maintenance of her children. Confirmed that she receives no income from LR.No.14/Kiru/2725,LR.No.14/Kiru/2732 as the same have not been developed. She denied receipt of any rental income from LR. No.209/785/17 and LR. No.209/16; she has not also received any income from the shares in the companies enumerated and lastly that she has been denied access to properties

forming the estate of the late Ruth Wanjiku Wachira.

Among annexures to the said affidavit is the original grant to Ruth Wanjiku Wachira Macharia, and Samson Kabare, titles in respect to LR.LOC.14/Kiru/2725 and 2732 bearing the names of Ruth Wanjiku Wachira, Peter Maina Wachira, Winny wangui Macharia and Jane Wanjiru Wambugu. The information on the green card shows that the property had found its way into the name of Ruth Wanjiku Wachira on the 22/1/87. Title was issued into her name the same date. The other 3 title holder's names were added on 23/9/98.

There is also the affidavit of Winny Wangui Macharia deponed on the 24th day of November, 2010 and filed on the 25th day of November, 2010. The salient features of the same in a summary form are that she is widow of a deceased first son of the deceased subject of these proceedings. The deceased had during his life time given to her deceased husband LR. No.Loc.14/Kiru/1751, LR Loc.14/Kiru/2720 and LR.Loc.14/Kiru/2732 a quarter share but which had not been transferred into her deceased husbands' name; she also has knowledge that the original grant had been issued to Ruth Wanjiku Wachira and Samson Kabare; she has knowledge that the said grant was confirmed in favour of Ruth Wanjiku Wachira and the properties then disclosed namely LR. Loc.14/Kiru/1965/6,LR. Loc.14/Kiru/54,LR Loc.14/Kiru/44 and LR.14/Kiru/1793 all located in Muranga, the said properties were vested in Ruth Wanjiku Wachira for the benefit of all her children; confirmed that the said Ruth Wanjiku Wachira never distributed the said estate; confirmed the earlier deponents that the said Ruth Wanjiku Wachira suffered a stroke in 1996 and was unable to discharge her duties as an administrator, which duties were purportedly taken over, by Ruth's daughter Josephine Wangare under a power of Attorney which purporting was opposed by the widows of the deceased sons and another son who was living then; that the said opposition led to the filing of an application dated 11th day of April,1997 seeking the appointment of Winny Wangui Macharia, Jane Wanjiku Wambugu and Peter Maina Wachira as administrators in the place of Ruth Wanjiku Wachira and Samson Kabare; that the said litigation led to the issuance of the orders of 3rd March,1998 in their favour. The deponent goes further to state that by reason of the issuance of the orders of 3/3/98, this deponent became a beneficiary of the following properties LR. Loc.14/Kiru/2725(a quarter share) LR.No.209/785/17 (original LR. 209/785/611-) one eighth share LR.NO.209/2716- one eighth share, LR.Loc.14/Kiru/1965/6- whole, one quarter share in the shares held in ICDC investment Co. Limited EA Breweries Limited, Munyaka Kuna Company Limited, Sukuma Wiki Cooperative society, BAT (Kenya) Limited, Equity building society, Kenya Breweries Limited, Kenya Commercial bank Limited Golden A/C 172244558,Equity building society savings A/C, Muranga Farmers Cooperative Union Savings A/C, Kenya commercial Bank Golden A/C/No.143063386. The deponent goes further to depone that by virtue of the orders afore said she managed to get back the following properties which had been given to her deceased husband by the deceased as gift intervivos namely LR. Loc.14/Kiru/2720,LR. No. Loc.14/Kiru/1751,LR Loc.14/Kiru/2732C (a quarter share) That in addition to the above the deponent also became a beneficiary of the following properties as a result of the said orders of 3/3/98 namely LR. No.Loc.14/Kiru/1965/6. The deponent went on to confirm that indeed she receives income from Loc.14/1965/6 which she acknowledge, she receives by virtue of the orders of 3rd March 1998 and utilizes the same for the maintenance of her family and ahs no accounts for it; that she has not been receiving a share of the income generated from LR. No. 209/785/17 and LR. No.209/2716; that she has not also been receiving income or benefits from the shares in the companies enumerated and lastly that she has been denied access to the estate of the late Ruth Wanjiku Wachira.

There is also an affidavit of Anne Njeri Knott deponed on a date not indicated but filed on the 29th day of November, 2010. In a summary, the deponent depones that indeed shop number 2 Shauri Moyo had belonged to the deceased subject of these proceedings; that the same was eventually taken over by her brother who never paid the city council rates and rents leading to the city council issuing a notice to reposes; that she the deponent then paid off all the city council dues to be city council and asked them to transfer the property to her which they did; that as such contrary to the assertions of the administrators S.N. Nganga and T.T.Aswani that this property is the estates property, the correct position is that this is not part of the estate property; that there are also outstanding costs payable on account of HCCC No.819/2009 and PMCC No.5533/2003; confirmed that one Donald Owang was now an administrator and he had been representing her in court; contended that the estate of the deceased had been mismanaged

for many years and monies from rent from all the properties had been misappropriated by some beneficiaries and in the denying other lawful beneficiaries of their lawful share entitlement. She seeks an order for payment of fees to her as an administrator for the deceased estate.

There is also another affidavit of Anne Njeri Knott deponed on the 14th day of December 2010 and filed on the same date. The salient features of the same are that she successfully moved the court herein for the revocation of the grant which had initially been issued herein; that they were lawfully issued with a grant of representation to the estate of the deceased jointly with her sister Elizabeth Nyambura; that as at the time the cheque of Kshs.1,974,007.00 was received from Gimco Limited by S.N. Nganga through the instructions of Beatrice Wairimu Maina, the deponent and her sister Elizabeth were already on board as administrators of the deceased estate but they were not consulted; that S.N. Nganga received the cheque of Kshs.1,974,000.00 on the instructions of Beatrice Wairimu even before they had been appointed as administrators' by the court; that the said appointment came on the 15th day of May,2007; that she never approved the payment of Kshs.167,955.00 paid to the counsels as their fees out of the estate as they had not been appointed by the beneficiaries; that distribution of the said amount to the widow and daughter in-law of the deceased to the exclusion of the daughters was unfair and for this reason the court is asked to intervene and redistribute the said proceeds.

On the said affidavit there is annexed a banks statement in the name of Ann Njeri Knott A/C number 005010151423 with Equity Bank running from 1st May,2007 to 30th May,2009. There are some cheque paying in on 6/7/2007 of Kshs.41,250.00, 19th November,2007 of Kshs.207,500.00, 11th February for Kshs.180,000.00, 12th August,2008 for Kshs.180,000.00, 2nd November,2008 Kshs.180,000.00 and lastly 7th May,2009 for Kshs.180,000.00. These payings in as well as the intent and purport of the account have not been adequately explained as to their connection to the estate.

There is also annexed bank statements with respect to Mburu Gichohi & Knott also held with Equity Bank with respect to bank account number 0156100062942. It runs from 01-January-2007. It has no circled payings in. It has not been explained in the affidavit how it is linked to the estate.

On record is also the affidavit of Beatrice Wairimu Maina deponed on the 9th day of December, 2010 and filed on the 10th day of December, 2010. The salient features of the same in a summary form are that she is one of the beneficiaries of the estate of the late Gerald Wachira Macharia being widow to a deceased son Peter Maina Wachira; the current affidavit under review is supplementary to the affidavit which had been deponed by the deponent and filed on the 25/11/2010; that by way of clarification Loc.14/Kiru/2732, this property was registered in the joint names of 4 persons namely Jane Wanjiru Wambugu, Winnie Wangui, peter Maina and Ruth Wanjiku wachira deceased; that a survey or undertook subdivision and subdivided the suit property into 4 portions and she utilized her portion for subsistence farming; that parcel number LR.Loc.14/Kiru/2719 is not a subdivision of LR. Kiru/2732 and the deponent does not use this portion; that land reference Loc. Number 14/Kiru/1965/44 is a plot with a small shop, the deponent and her family have been residing at the back of this shop since 1980. It had been transferred to her late husband in the year 1990, and she transferred the property into her name following succession proceedings to the estate of her deceased husband; that she holds the original titles and was surprised when she conducted a search recently and discovered that the property had infact been transferred into the names of Anne Njeri Knott and Elizabeth Nyambura; she confirms that since 2005 she has been collecting Kshs.10,000 per month from the shops on LR. Loc.14/Kiru/1165/44. All the money collected is used for the deponents' families upkeep.

Annexed to the said short affidavit, there is mutation form for LR. No.Kiru/2732 showing that the parcel had been subdivided into four portions; Title in respect of Loc.14/Kiru/1965/44 in the name of Beatrice Wairimu Maina dated the 10th day of January, 2006. The green card is not exhibited but the search certificate indicates that indeed Ann Njeri Knott and Elizabeth Nyambura have been registered in respect thereof. Restrictions on the dealings with the property were restricted until the original certificate had been surrendered. There are also some receipts issued to various persons for rent covering the period of 2005-2008. The property in respect of which the rent was being paid has not been indicated. There is also a copy of title in respect of plot number Loc.14/Kiru/1965/44 indicating that it had been transferred to

Peter Maina effective 8/8/95. There is also a copy of title number LR.209/6419. The entries on the first page indicate clearly that it had initially been registered in the names of Jerald Wachira Macharia. The entries exhibited show that vide entry number 15 a status quo order had been registered against the title, vide entry number 16 a court order issued by the same court in succession cause number 721/1985 cancelled the status quo order. Vide entry number 18, the property was transferred to Douglas Gachuhi Kagoiya after presenting Title had been issued under entry number 17 vide entry number 19 orders issued in the same succession cause number 721/1985 barred dealings on the property and then vide entry number 20, the property was transferred into the names of Anne Njeri Knott and Elizabeth Nyambura on 21/5/2007 in their capacity as administrators. There is also exhibited title for LR. Number 209/6008. Entries thereon and therein indicate clearly that it had initially been registered in the names of Jerald Wachira Macharia. Vide entry number 11, there is a court order in 721/1985 registered, vide entry number 12, Assent (transfer) to one Wanjiru Wambugu, vide entry number 13, a court order issued in succession cause number 721/1985 revoked entries number 10 and 12 above and vide entry number 14 the property moved into the names of Anne Njeri Knott and Elizabeth Nyambura as personal representatives of the estate of the deceased.

There is also another affidavit deponed by Anne Njeri Knott deponed don a date not indicated but filed on 16 December, 2010. The salient features of the same are that:

Lastly there is the affidavit of Ann Njeri Knott deponed on a date not indicated but filed on the 16th day of December,2010. The salient features of the same are that the deponent requests that the counsels on board should be requested to file their bill of costs; that the statement of accounts filed does not or is not reflective of the true state of affairs of the estate of the deceased from the time they took over the administration of the estate to date; that it is not true that the administrators have paid the company's fees but it is not clear which company the deponent was referring to; the deponent also pleads with the court to clear outstanding court fees to M/S Kirundi and Co. Advocates as the instructions to the said firm had been given by the deponent on behalf of the estate, that the accounts the deponent presented to court were on account of transactions undertaken on behalf of the estate on account of Misc civil application No 261 of 2001 in respect of which the deponent incurred expenses when partitioning LR. Loc.14/Kiru/3379 into four portions for the benefit of Ruth Wanjiku Wachira –LR. No.4134-3.44 ha, Peter Maina Wachira LR. No.4137-3.44 ha, Jane Wanjiru Wambugu LR. No.4135-3.44 ha and Anne Njeri Knott-LR. No.21136.

The annexures to the said affidavit are a letter dated 8/3/2008 addressed to the deponent Anne Njeri Knott by Kirundi & Co. Advocates seeking payment of their fees being the balance of Kshs.54, 608.70 out of the amount due to Kshs.91,232.00 after the deponent had made a payment of Kshs.36,623.30, a copy of the order in Nairobi HCCC No.819 of 2001 (OS) in which Ruth Wanjiku Wachira had been sued among others in her capacity as the legal representative of the estate of Gerald Wachira. The resulting orders were that the court ordered the tenants of LR. No.209/785/17 and 209/2176 to be depositing the amount in the account of Thuru Thuru house A/C Number 24278/466 pending the disposal of the suit. There is another letter from Kirundi & Co. Advocates dated 25/11/2008 addressed to the deponent demanding outstanding legal fees of Kshs.98,335.00; a similar communication dated the 15th May 2008, an order issued by Kikuyu SRMS court authorizing the subdivision of LR. No. Loc.14/Kiru/3379 into four equal parts. There is also a sheet of paper un headed and unsigned showing the distribution of Kshs.1,974,000.90, a sell agreement and transfer agreement for LR.number 209/785/17 originally LR. No.209/785/6/1 to Jerald Wachira Macharia, the deceased subject of these proceedings and another which contains an annexure containing a declaration by the deceased herein that he was the sole owner of the half share in the said suit property.

Parties were also allowed by the court to make representations with regard to the identification of the estates property, identification of beneficiaries and mode of distribution in order to guide the court when making orders on the request for provision for a dependant. There is a set filed by the firm of J.M. Waiganjo & Co. Advocates filed on the 16th day of December, 2010 on behalf of Ann Njeri Knott, Eustace Nduhiu on behalf of Mary Kahia and Antony Gerald Wachira on behalf of Josephine Wangare Wachira. In it, the identified beneficiaries are given as Winnie Wangui Macharia representing the house of Timothy Macharia Wachira (deceased son, Jane Wanjiru Wambugu representing the house of Hezehiah Wambugu (deceased son), Beatrice Wairimu Maina representing the house of Peter Maina

Wachira (a deceased son), Anne Njeri Knott unmarried, Anthony Wachira Gerald representing the house of Josephine Wangare daughter (deceased); Eustus Nduhiu representing the house of Mary Wairimu Kahia daughter (married) Dorcas Wanja Wachira daughter (not married) Millicent Wangui Wachira-daughter not married and Catherine Elizabeth Nyambura Wachira daughter (not married). Assets under the immovables there is listed LR. No.14/Kiru/1965/6, LR.No.14/Kiru/54,LR No.14/Kiru/44,LR NO.14/Kiru/2732, LR.NO.14/Kiru/2723, LR No.14/Kiru/1751,LR.NO.14/Kiru/1725,LR Loc.14/Kiru/897,LR.No.14/Kiru/1793,LR.No.209/6045-Mbotela, LR. NO.209/6419- Shauri Moyo,LR. No.209/2716/209/785/17 Thuru Thuru house, LR. No.19/Nyakianga/1024,LR.NO.209/6008-Maringo.

There is also listed shares in ICDC investments Co. Limited share certificate No.28005813035,655087 and 654948,EA Breweries Limited shares certificate No.0254369, Kenya Breweries share certificate Nos.0320022 & 026058, Munyaka Kuna Limited share certificate number 173, Sukuma Wiki Co-Operative society Limited share certificate number 173. BAT Kenya Limited share certificate No.4511, Equity building society investment share certificate No.6735- 1326729-13, Kiru Traders Limited- share certificate No (not given), Equity Bank Limited savings Account No.05-08145,Muranga Farmers Co-operative Union Limited savings account No.0378-05374.

There is also listed motor vehicle Reg No. KPQ 003-Volvo station Wagon and motor vehicle Reg. No.KTZ300-Datsun double cabin pickup. With regard to assets disposed off during the life time of the deceased are shown as LR. No.14/Kiru/2723 allegedly gifted to Ann Njeri Knott in consideration of developments done by her on LR. NO. 14/Kiru/1965/6 and LR. No.Loc.14/Kiru/8971 comprising 5 acres gifted to Antony Jerald Wachira son of Ann Njeri Knott and 5 acres there of gifted to Jemimah Njumbi a sister to the deceased.

With regard to the current status of the said properties, it is indicated that one Mrs. Winnie Wangui Macharia has in her possession LR. NO. 14/Kiru/1965/6 with a commercial building from which income is generated, LR. NO.14/Kiru/1751- whole, LR. NO.14/Kiru/2720 and LR. NO.14/Kiru/2732. Mrs. Jane Wanjiru Wambugu is said to be in possession of LR. No. 19/Nyakianga/1024, LR No. Loc.14/Kiru/2732, LR. No.loc.14/Kiru/2721,LR. No.Loc.14/Kiru/2722, LR.NO.209/6008- Maringo, LR. NO.14/Kiru/4133 and motor vehicle Reg. No.KTZ 300-Datsun double cabin pick up. Mrs. Beatrice Wairimu Maina is said to be in possession of LR. NO.14/Kiru/1965/44 Githiini 2 plots in one, LR.Loc.14/Kiru/1965/54, being a half share petrol station plot, LR. Loc.14/Kiru/2719 part of LR. NO. Loc.14/Kiru/2732,LR. No.Loc.14/Kiru/4136 and motor vehicle Reg. No.KPQ 003-Volvo station Wagon. Ann Njeri Knott and Elizabeth Catherine Nyambura have LR. NO.209/6419 registered in their names as administrators. Lastly the current administrators have in their possession LR. NO. Loc.14/Kiru/1965/54 a petrol station operated by Kenol Kobil with the proceeds going to the account of the administrator and LR. No.209/2716 Thuru Thuru house 50% of income thereof going to the administrators and then Munyaka Kuna Trading Co. Limited.

With regard to distribution the suggestion made was that LR. Number 4134 and 4135 comprising 8 ½ acres each forming the matrimonial home where the deceased herein and his deceased widow were buried was to be consolidated and then shared equally amongst Ann Njeri Knott, the house of Josephine Wangare, the house of Mary Wairimu Kahia, Dorcas Wanja Wachira, Catherine Nyambura Wachira and Jane Wanjiru Wambugu representing the house of Hezekiah Wammbugu.

There is also mention or identification of assets which have already been sold by certain parties:-

- (a) 10 (ten) cows and 6(six) calves all sold by Peter Maina.
- (b) LR. NO.209/6045 Mbotela sold by Peter Maina. It has a commercial building on it.
- (c) LR. No.19/Nyakianga/1024-0.4 Hectares sold by Jane wanjiru.
- (d) I.C.D.C. Investment shares -sold.
- (e) East African Breweries Limited shares -sold.

(f) B.A.T. Kenya Limited shares (sold)

(g) Kenya Breweries Limited shares (Sold)

(h) Kenya commercial bank limited shares sold

(i) LR. No. Loc.14/Kiru/1436 sold by the house of Peter Maina.

As for the income generating properties, the following were stated to be current position LR. No.14/Kiru /1965/6 with a commercial building which is under the care and custody of Winnie Wangui Macharia who had been receiving income from the same.

(b) LR.No.209/6008- Maringo with a commercial building was currently under the care and control of Jane Wanjiru Wambugu who had been renting it out and earning income.

(C) LR. No.209/6419 Shauri moyo had been rented out by Hezekiah Wambugu and Peter Maina from 1985-1996 but never accounted for the income there from. Thereafter the house was occupied by the deceased Ruth Wanjiku Wachira till she died in 2004.

(d) LR. NO. 209/2716 Thuru Thuru house whose 50% share is owned by the estate. It is indicated that income from this building from 1985-2000 was being collected by P.G. Mburu advocate, Hezekiah Wambugu, Keriasek Agents, Ruth Wanjiku, Josephine Wangare, Peter Maina, Gerald and Jane Wanjiru Wambugu. Later vide a court order, the rent was ordered to be collected by Gimco Agents. The said collections were under the supervision of the court and over seen by the current administrators on board. Jane Njeri Knott collected the rent from 2001 to 2007 and allegedly applied it towards the payment of land rates and rents and also used part of it for the upkeep of Ruth Wanjiku Wachira.

(e) There is also LR. No.Loc.14/Kiru/1965/54 operated by the house of Peter Maina from 1985-2007. They were earning proceeds from Kenol Kobil which was never accounted for.

Lastly that Shauri Moyo Nyama land is a property belonging to the city council but had been rented by the deceased during his life time and was later transferred to Anne Njeri Knott. Whereas Jericho Lumumba house No AB3-5847 was then currently rented by Mary Wairimu Kahia as a tenant of the city council.

There are also representation from Mrs. Winnie Wangui, Mrs. Jane Wanjiku Wambugu and Mrs. Beatrice Wairimu Maina filed on the 10th day of February, 2010. According to the trio, the list of beneficiaries should comprise only Mrs. Winnie Wangui Macharia on behalf of the house of the late Timothy Macharia Wachira (first son- deceased); Mrs. Jane Wanjiru Wambugu and Gerald Wachira Wambugu in their capacity as administrators of the estate of Hezekiah Wambugu Wachira (second son- deceased), Mrs. Beatrice Wairimu Maina and Gerald Martin Wachira Maina as Administrators of the Estate of Peter Maina Wachira (3rd son- deceased) and lastly Elizabeth Nyambura Wachira- an unmarried daughter of the deceased.

With regard to the agreed list of assets, it tallies the list presented by Ann Njeri Knott, Antony Wachira Gerald and Eustace Nduhio Kahia save that they included Shauri Moyo Nyama land and Jericho Lumumba house No.AB3-5847 as being among the assets of the distributable estate of the deceased.

With regard to who has the current position of the deceased assets, those of Winnie Wangui Macharia tallied and confirmed the list given by Ann Njeri Knott and her group. Save that there is mention that LR. No. Loc.14/Kiru/1751 and LR. NO. Loc 14/Kiru/2720 had been allocated during the life time of the deceased. Likewise the list of properties currently under the care and control of Jane Wanjiru Wambugu tallies the list enumerated by Anne Njeri Knott and her group save that the motor vehicle Reg. No.KTZ300-Datsun double cabin pickup was left out. There is an explanatory note to the effect that LR. No. Loc.14/Kiru/2732 LR.No. Loc.14/2732, LR. NO. Loc.14/Kiru/2722, LR. 209/6008 Maringo were all allocated to Hezekiah Wambugu Wachira during the deceaseds' life time. Also allocated to the said late

Hezekiah is Jericho Lumumba house No.AB3-5847 but had since the demise of the deceased been forcibly taken and occupied by Mary Wairimu Kahia a married daughter of the deceased. Added that LR. No. Loc.19/Nyakiasnga/1024 had been disposed off.

While those of Mrs. Beatrice Wairimu Maina, the list tallies with that of Anne Njeri Knott and her group save that there is additional property namely LR. No.209/6419 Shauri Moyo, LR. No.209/6045 Mbotela and Shauri Moyo Nyama land a city council plot. This list also contains an explanatory note to the effect that LR. No. Loc.14/Kiru/4136 was exchanged with LR. No.Loc.14/Kiru/2452, LR. 209/6419 was sold to one Douglas Gachuhi Kagoiya, LR. No.209/6045 Mbotela estate was sold by the late Peter Maina Wachira, Shauri Moyo Nyama land had been forcibly occupied by Mrs, Anne Njeri Knott, LR. No. Loc 14/Kiru/1965/44 and LR. No. Loc.14/Kiru/1965/54 were currently registered in the names of Mrs. Anne Njeri Knott and M/S Elizabeth Nyambura purporting to be administrators of the estate of Jerald Wachira Macharia. Mrs. Anne Njeri Knott is indicated to be in possession of LR. No. Loc.14/Kiru/897-5 acres out of LR. No. Loc 14/Kiru/2723. There is an accompanying explanatory note to the effect that Mrs. Anne Njeri Knott is indicated to be occupying forcibly Shauri Moyo Nyama land, LR. No.209/6419 Shauri Moyo which was sold to Mr. Douglas GACHUHI Kagoiya LR. No.Loc.14/Kiru/4134 Mary wairimu Kahia, Mrs. Millicent Wangui Gikonyo, Mrs. Dorcas Wanja Ngatia and Mr. Antony Wachira Gerald.

Further that Mrs. Jemima Njumbi has 5 acres out of LR. No. Loc.14/Kiru/877. While Mrs. Mary Wairimu Kahia is forcibly occupying Jericho Lumumba house No AB3-5847 which had been allocated to the late Hezekiah Wambugu Wachira by the deceased.

On the mode of distribution, the following sentiments were put forward. It is suggested that Mrs. Winnie Wangui Macharia should wholly inherit LR. No.14/Kiru/1965/6, LR. No. Loc.14/Kiru/1751 and LR. No. Loc.14/Kiru/2720 (0.03 Ha. It is also recommended that she gets 1/3rd share of LR. No. Loc.14/Kiru/2732, LR. No. Loc.209/785/17 LR.209/2716 and shares and accounts on the various named companies, and ¼ quarter share LR. NO. Loc.14/Kiru/4134 and LR. No. Loc.14/Kiru/1965/54.

As for Mrs. Jane Wanjiru Wambugu and Gerald Wachira Wambugu. It is proposed that she gets in whole LR. No. Loc.14/Kiru/14135, Jericho Lumumba No. AB3-5847. LR.No. Loc14/Kiru/2721, LR. No. Loc.14/Kiru/2722, LR. No.209/6008, then 1/3rd of LR. Loc.14/Kiru/2732, LR.No. 209/785/178, LR 209/2716- and 1/3rd share and accounts in various named companies. Further that she gets ¼ shares in LR. Loc.14/Kiru/4134 and LR. No.Loc.14/Kiru/1965/54.

As for Mrs. Beatrice Wairimu Maina and Gerald Martin Wachira Maina, it is proposed that she gets the following properties in whole LR No.Loc.14/Kiru/1965/44, LR.Loc.14/Kiru/2719, LR.No.Loc.14/Kiru/4136-(Exchanged with LR. No.14/Kiru/2452, LR.No.209/6419 Shauri Moyo whole, sold LR.NO.209/6045 Mbotela whole which is sold and Shauri Moyo a city council plot a 1/3rd share of LR.NO.Loc.14/Kiru/2732, LR. No. 209/17 & LR.No.209/2716- and shares and accounts in various named companies. For Ms. Elizabeth Nyambura Wachira it is proposed that she gets ¼ of LR No.Loc.14/Kiru/ 4134.

The three namely Winnie Wangui, Jane Wambugu and Beatrice Wairimu filed further sentiments being a response to the sentiments of Anne Njeri Knott, Antony Gerald Wachira and Eustace Nduhiu Kahia and the salient features of the same are that Mary Wairimu Kahia the mother of Eustus Nduhiu is alive and has not given any power of Attorney to him to act on her behalf. The fore going notwithstanding, the said Mary Wairimu Kahia does not qualify for inheritance as she is a married woman; that likewise Antony Gerald Wachira the 3rd son of late Josephine Wangare who had married a Mr. Njuguna who was still a live as at the time of the demise of the deceased subject of these proceedings is not entitled to inherit anything from this estate. According to the three named also Anne Njeri Knott, Dorcas Wanja Ngatia and Millicent Wangari Gikonyo are not entitled to inherit anything from the said estate because Anne Njeri Knott had married a Mr. Knott who was since deceased, Dorcas Wanja Ngatia was married to a Mr.Ngatia while Millicent Wangui Gikonyo was married to Stephen Gikonyo.

Turning to assets, maintained that the two properties left out should be included in the inventory of the deceaseds' assets namely Shauri Moyo- Nyama land and Jericho Lumumba House No.AB3-5847.

With regard to motor vehicles, stated that motor vehicle KPQ003-Volvo station wagon broke down and was taken to an unknown garage by the late Peter Maina Wachira and its current position then was unknown. Whereas KTZ300 was with Jane Wanjiru Wambugu and had belonged to the late Hezekiah Wambugu and is therefore not property belonging to the estate of the deceased herein. They went further to state that the assets distributed by the deceased during his life time should not be disturbed as indicated in their proposals filed on 10th February, 2010.

With regard to a response on who is currently in possession the trio contended that LR.209/6419 had been distributed to Peter Maina Wachira and upon demise and vide succession proceedings in Nairobi HCSC NO.1492 of 2002 the same was vested in Beatrice Wairimu Maina and Gerald Martin Wachira Maina and was lawfully procedurally and legally transferred to Douglas Gachuhi Kagoiya but presently Anne Njeri Knott and Elizabeth Catherine Nyambura were occupying it and collecting rents. Reiterated that LR. No. Loc.14/Kiru/1965/44 though occupied by Mrs. Beatrice Wairimu Maina, the same was current registered in the names of Anne Njeri Knott and Elizabeth Nyambura purporting to be administrators of the estate herein. That the same Anne Njeri Knott and Elizabeth Nyambura have denied Beatrice Wairimu Maina 50% proceeds of rent from LR. No. Loc.14/Kiru/1965/54 after registering it in their names purporting it to be belonging to the estate of Ruth Wanjiku Wachira. Lastly that Shauri Moyo Nyama land had been allocated to Peter Maina Wachira but has been grabbed by Anne Njeri Knott. While Jericho Lumumba AB3-5847 had been allocated to Hezekiah Wambugu but, it had been forcibly grabbed and occupied by Mary Wairimu Kahia.

On the mode of distribution proposed by Anne Njeri Knott and her group, the court had urged to disregard it and go by the mode of distribution proposed by Winnie Wangui, Jane Wambugu and Beatrice Wairimu Maina. The reason being that all other daughters who are married should not get an inheritance from the deceased herein. In particular they stress that LR. NO. Loc.14/Kiru/4134 the homestead should be distributed between the three widows and the unmarried daughter while LR. No. Loc.14/Kiru/4135 should remain with Jane Wanjiru wholly. They also maintain that there are no properties still remaining for distribution with regard to the estate herein as the properties not distributed during the deceaseds' life time were distributed following presentation of the schedule filed on 25/2/98. Also add that although the properties forming the schedule were distributed in accordance with the said schedule, the company shares and bank accounts proceeds were not shared in line with the said schedule. To them the transfers effected by Josephine Wangare under a purported power of Attorney from the deceased late widow Ruth Wanjiku Wachira were procedurally done and they should be protected. While commenting on proposed disposals by others further stated that it is plot LR. Number Loc.14/Kiru/4136 which is in existence and not LR. Number 3436. The said property is not available for distribution as it had been exchanged with LR. No. Loc. 14/Kiru during the life time of Peter Maina Macharia to whom it had been given. Also Reiterates that LR. No. Loc.14/Kiru/1965/6 with a commercial building has been allocated to Winnie Wangui Macharia, LR. No. 209/6008 Maringo allocated to Jane Wanjiru Wambugu; LR. No.19/Nyakianga/1024 had been purchased for the late Hezekiah Wambugu Macharia long before the demise of the deceased herein and registered in his name. As such it was never property of the deceased herein and it should not have been invented. Further that LR. No.209/6045 was allocated to late Peter Maina Wachira in the schedule and he sold it before he died. Likewise LR. No. 209/6419 Shauri Moyo was allocated to the late Peter Maina Wachira. It was sold by his administrator after his death.

With regard to the income from the Thuru Thuru house LR. 209/785/17, it is contended that it was initially being collected by Josephine Wangare and thereafter by Ann Njeri Knott and both failed to account for it and it was not true that rents from 1985-1996 had been paid to the three deceased sons of the deceased who never accounted for it. Maintains that the proceeds of rent from this property should be distributed in accordance with the schedule. Lastly that income from LR. No. Loc.14/Kiru/1965/54 Kobil, the late Peter started taking half share of the rents from 1998 upto 2004. While the other half was being taken by the late Josephine Wangare and after her by Anne Njeri Knott from 2004 until November 2009 and these have never been accounted for.

There are also representations by Dorcas Wanja Wachira, Millicent Wangui Wachira and Elizabeth Nyambura Wachira filed on the 8th day of March, 2010. The salient features of the same are that they concur with the previous two lists on the identity of beneficiaries; confirmed as the correct position that

the widow of the deceased and all the sons of the deceased were dead, maintained that all the daughters of the deceased had never married and any body who purports to state that they are married should bring that evidence to support that assertion. They maintain that they are single mothers who have single handedly struggled to bring up their children. They recognize the widows of the deceased sons of the deceased herein as beneficiaries of the estate of the deceased. They have knowledge that the widows of the deceased brothers had benefited immensely from the estate of the deceased as they had been given several parcels of land by the deceased during his life time which parcels have been in turn inherited by the said widows from their late husbands.

With regard to the assets forming the deceaseds' estate, they were enumeratedas:**LR.No.Loc.14/Kiru/1965/6,LR.No.Loc.14/Kiru/1965/54,LR.No.Loc.14/kiru/2732,LR.No.Loc.14/Kiru/4134,LR. No. Loc.209/6419, LR. No.209/6045,LR. No.209/27/6 &209//2785/17,LR. No.209/6008, Munyaka Co. Limited shares, Sukuma Wiki Co-operative Limited shares, Kiru traders Limited shares and Kiru investments shares.**

As regards who has occupation of which property currently, they confirmed the other two lists with regard to the properties currently in possession of Winnie Wangui but with a rider that since Loc.14/Kiru/1751 and LR. No.14/Kiru/2720 were allocated to Timothy Macharia late husband of Winnie Wangui during his life time, these should be left out of the inventory of the deceased's assets and secondly she should not be considered as a beneficiary of the residue of the estate of the deceased.

With regard to Jane Wanjiru Wambugu, they acknowledge that she has possession of LR. No. 209/6008 and ¼ share of LR. No. Loc.14/Kiru/2732. There is a rider that Wambugu's late husband Hezekiah Wambgu Wachira had been allocated LR. No. 19 /Nyakianga/1024, LR. No. Loc.14/Kiru/2721 and LR. No.Loc.14/Kiru/2722 during the deceaseds' life time and hence these properties do not form part of the deceaseds' assets according to their list. For this reason the said Jane Wanjiru is not entitled to inherit anything from the deceaseds' estate.

As for Beatrice Wairimu Maina, they had possession of LR. No. 209/6045 and LR. No. Loc.14/Kiru/2732. There is a rider that Beatrice Wairimu together with her late husband Peter Maina Wachira jointly sold LR. No. 209/6045 of the estate. She also sold LR. No.209/6419 which had been the matrimonial home for their deceased parent's inspite of there being in existence a caution lodged against the title. But confirm that vacant possession had not been given. They added that Ann Njeri Knott had been given 5 acres out of LR. No. Loc.14/Kiru/897 and LR. No.14/Kiru 2723 and was collecting rent from LR. No. 209/6419. Whereas Elizabeth Nyambura Wachira lives on LR. No. 209/6419.

With regard to their mode of distribution they state that Dorcas Wanja Wachira, Antony Gerald Wachira, Millicent Wangui Wachira, Elizabeth Nyambura and Mary Wairimu Kahia should wholly but in equal shares inherit parcels number LR. Loc.14/Kiru/4134, LR. No.Loc.14/Kiru/1965/6, LR. No.Loc.14/1965/54,LR. No. Loc.14/Kiru/2732,LR. No. Loc.209/6008, LR. No. Loc209/2716 &209/785/17, shares at Munyaka Kuna Co. Limited, shares at Sukuma Wiki Co-operative society Limited, and lastly shares with Kiru Traders limited.

Further on distribution, stated that LR. No.209/6419 was to be given to Elizabeth Nyambura wholly, LR. No. Loc.14/Kiru/1965/6 to go to Mary Wairimu Kahia and Anne Njeri Knott in equal shares, LR. No. Loc.14/Kiru/1965/54 to Millicent Wangui Wachira and lastly LR. No.209/6008 to Dorcas Wanja Wachira and Anthony Gerald Wachira in equal shares, while LR. No.209/2716/16 &209/785/17 was to be distributed in equal shares to Mary Warimu Kahia, Dorcas Wanja Wachira, Anthony Gerald Wachira and Millicent Wangui Wachira, Anne Njeri Knott and Elizabeth Nyambura Wachira in equal shares, meaning that the entire property was to vest to the daughters.

In further observations, it is stated that they reiterate that property LR. No.209/6045 was sold by Beatrice Wairimu and her husband without the knowledge of the estate; reiterate that properties known as Nyama land Shauri Moyo and Jericho Lumumba No. AB35847 are city council houses and should not form part of the inventory of the assets of the estate; they confirm that Anne Njeri Knott paid land rates and rent to the city council and got the property transferred to her; confirm that indeed the deceased

dished out some of his property during his life time; contended that Winnie Wangui inherited LR. No.Loc.14/Kiru/1751 meaning 8½ acres and LR. No. Loc.14/Kiru/2720. While Jane Wanjiru Wambugu inherited LR. No. 19/Nyakianga/1024, LR No.Loc.14/Kiru/2721, LR.No. Loc.14/Kiru/272,LR. No. Co.14/Kiru/4133 measuring 8½ acres and motor vehicle registration number KTZ 300. While Beatrice Wairimu inherited LR. No.Loc.14/Kiru/1965/44 being two plots in one, LR. No. Loc.14/Kiru/2619,LR. No. Loc.14/Kiru/4136 measuring 8½ acres and Loc.14/Kiru/2724 and motor vehicle registration No. KQP053 Volvo station wagon.

Beatrice Wairimu filed further sentiments on the 25th November, 2010. In a summary she sought to clarify that indeed LR. No. 14/Kiiru/1965/44 had been given to her late husband during the life time of the deceased, she had set up a home on it, it was first registered in her husbands name and later changed to her name, she still resides on the said portion despite the register reading the names of Anne Njeri Knott and Elizabeth Nyambura as joint administrators, confirmed that indeed she is a beneficiary of LR. No. Loc.14/Kiru/2719 which is a subdivision of LR. LR. No. Loc.14/Kiiru/2732 maintains this portion was pointed out to her by the late Gerald Wachira and the title 2732 bears 4 names namely Jane Wanjiru Wambugu, Winnie Wangui Macharia, Peter Maina Wachira and Ruth Wanjiku Wachira, confirmed that the four subdivisions are reflected on the ground and occupied by the named respectively with the exception of the portion of Ruth which s occupied by Millicent Wangui.

Beatrice has gone further to state that she was given property after the distribution of 1998 which had to be taken note of namely Loc.14/Kiru/1965/44 over which she has exclusive control, Loc.14/Kiru/2719 which had been pointed out to her late husband before the deceased demise, Loc.14/Kiiru/1965/54 (petrol station) in which she was given half share while the other half was given to Ruth Wanjiku (deceased). She lost control of this property to Ann Njeri Knott, LR. No.209/6419 (shauri Moyo) which is a business cum residential house which she confirms that she disposed it off to one Douglas Gachuhi in 2006 for an agreed price of Kshs.2,000,000.00. The intended buyer paid a sum of Kshs.700,000.00 but declined to pay the balance of Kshs.1,300,000.00 because she was unable to give him vacant possession. Adds that the property is currently under the control of Anne Njeri Knott who collects rent LR.209/6045 at Mbotela estate was sold by Peter Maina during his life time and was under the occupation of the purchasers. As for the Thuru Thuru house, she maintains that her late husband Peter Maina was entitled to ¼ share of the rental income from this property. Further that Anne Njeri Knott should be called upon to account for the rental income collected from 1998 to 2008 when a court order vested the mandate to collect rent in Gimco company Limited. Lastly that although the Shauri Moyo city council house was distributed Ann Njeri Knott had been collecting rental income for this house from 1998 to date and there was suspicion that Anne Njeri Knott may have changed the city council rent card to read her name; that she had never received her ¼ share of all the shares of the deceaseds' estate; that Loc.14/Kiiru/897 was subdivided into four portions earmarked for distribution to Jane Wambugu Anne Njeri Knott, Peter Maina and Ruth Wanjiku. Separate titles were issued with titles number Loc.14/Kiru/4136 going to her but was unable to utilize it due to family acrimony forcing her to exchange this portion with LR. No.Loc.14/Kiru/2452.

There are accounts filed by Anne Njeri Knott, filed on the 26th day of November,2010. There is indication that these covered payment for land rates, Rent demand, searches, registration fees, lawyers fees, fuel expenses, lease renewals, Kairo stoves, rent paid to city council, transfer and arrears, medical expenses, in house nurse therapist in respect of the Shauri Moyo property LR. No.209/6419, title number Loc.14/Kiru/3379 and mutation Thuru Thuru house Sheikh Karume street, matrimonial home renovation and electricity installation, Ofafa Maringo 209/6008, Shauri Moyo shop No.7, treatment for Ruth Wanjiku Macharia and upkeep, house items for both matrimonial houses, solar pane, Thuru Thuru house civil suit No.819/2001 and order. The total expenditure came to Kshs.5,481,625.00 but there are no supportive documents attached.

There are also statements of accounts and expenditure prepared by Jane Wanjiru Wambugu with regard to income generated from LR. No. 209/6008 from 1998-2009 showing income generated and expenditure. But just as those of Anne Njeri Knott, there are no accompanying documents to show the exact income generated and to show on what items the said amount was spent on.

Lastly there is a response from Dorcas Wanja Wachira, Millicent Wangui Wachira and Elizabeth Nyambura Wachira filed on the 14th day of December 2010. In a summary, there is mention that indeed the initial grant herein was issued to their deceased mother Ruth Wanjiku Wachira and an uncle Samson Kabare in 1985; that no distribution of the estate was done due to the mental illness of their late mother; that the afore stated situation continued to prevail until the year 2007 when upon an application being presented to court by Ann Njeri Knott and Elizabeth Nyambura, the said grant was revoked and a fresh grant issued in favour of Anne Njeri Knott and Elizabeth Nyambura Wachira; that according to their understanding upon the issuance of the said grant in their favour in 2007 the entire estate property were to be vested in them for purposes of distribution to the rightful beneficiaries; that their understanding of the issuance of the grant to them was that by revocation of the earlier grant, the entire estate of the deceased reverted and was to be distributed a fresh; that at no time did Elizabeth Nyambura receive any monies or income from any of the estate properties and did not sign any documents for and on behalf of the estate meant to procure or disburse any monies belonging to the estate and for this reason she has nothing to account for; that Elizabeth Nyambura a single mother of one child resides in the parents matrimonial property in Shauri Moyo LR. No.209/6419 and does not receive any income from the said property; that Dorcas Wanja also a single mother has never occupied any of the assets of the estate and therefore has nothing to account for; Millicent Wangui Wachira who is also unmarried lives with her children at the parents rural home LR. No.Kiru/4134 and does not receive any income from the property; conceded and confirmed that since the coming on board of the current administrators they have received some monies from the said administrators for their upkeep and their sustenance whose details are within the province of the said administrators who will reflect the same in their statements of accounts; maintain that as at the time of making their representation, they had not received their share of the 1.9 million Kshs. Being earnings from the Thuru Thuru house property; lastly that to their knowledge and in contrast to their position their sisters in laws namely Winnie Wangui, Jane Wambugu and Beatrice Wairimu had been enjoying substantial income from the estate and are also in possession of the title deeds to estate property, in respect of which they should account for to court; that the said sisters in laws enjoy 80% of the estate property to the exclusion of the daughters of the deceased and they urge the Honourable court to ensure that equity prevails.

From the afore set out lengthy assessment of the background facts, the court proceeds to draw out the following own framed questions for determination in the disposal of this matter:-

1. What is the courts findings on the facts assessed above?
2. What principles of law are applicable to these facts?
3. What findings has this court made on the application of the principles of law on the facts?
4. What bearing do the findings in number 3 above have on the application pending for provisions of a dependant?
5. What directions is this court going to make with regard to the best way forward with regard to the disposal of the application pending for provision of a dependant?
6. Are the other prayers accompanying the prayer for the provision of a dependant available to the applicant?
7. What appropriate orders is this court going to make in the disposal of this matter?

Findings on Facts

Initial grant

(i) The first grant was issued to one Ruth Wanjiku Wachira and Samson Kabare.

(ii) All beneficiaries of the deceaseds' estate were described as being adults. They comprised the widow, 2 deceased sons, one son and six daughters. The interest of the deceased sons were recognized and

respected and the widows of the deceased sons brought on board as beneficiaries.

(iii) The properties invented initially as forming the estate were only four but subsequent applications were made to bring on board other properties of the deceased as and when these were discovered. All the properties brought on board subsequently had accompanying supportive documents to show that they all belonged to the deceased, a fact which has been acknowledged by all those on board throughout the proceedings.

(iv) The grant was initially confirmed on 7/10/87 with only four (4) properties but subsequently rectified and amended to bring on board the newly discovered properties.

(v). The intention of the succession proceedings was that the widow was to hold all the properties forming the estate for the benefit of all the children meaning that both daughters and sons were entitled to receive a share of the said estate property.

(vi) Apparently the deceased's widow who is now also deceased did not distribute the estate leading to the filing of applications which have in turn contributed largely to the delay in the determination of this succession proceedings.

Findings on the numerous Applications filed herein.

(i) One filed on 5/2/97 allegedly by the widow Ruth Wanjiku Wachira seeking to remove one Samson Kabare as an administrator on the grounds that his services were no longer required as all the beneficiaries were adults and secondly that he had also proved uncooperative and allegedly sowing discord amongst the beneficiaries. This application had been prompted by the application which had been filed by Samson Kabare on 4/2/97 seeking to remove Ruth Wanjiku as an administrator. The one filed by Kabare was subsequently withdrawn. While that allegedly filed by Ruth Wanjiku appears not disposed of on merit as it was discovered that in fact the widow had suffered a stroke in 1996 and was bedridden and was therefore incapable of presenting the said application.

(ii) An application was presented on 11/3/97 by Winnie Wangui, Jane Wambugu and Peter Maina Wachira seeking the revocation of the grant issued and confirmed on 7/10/87 in favour of the initial administrators. The court was unable to trace on the record the proceedings in which the said application was disposed of but subsequent events show that it culminated in the orders which were endorsed by the court on the 3/3/98 authorizing the Deputy Registrar to execute the transfer documents on behalf of Ruth Wanjiku Wachira. The application of 3/3/97 had sought the intervention of the court on account of the said Ruth Wanjiku Wachira having suffered a stroke, which had made her bedridden and incapable of discharging her duties rendering the said grant useless. It is however clear that the thread running through subsequent proceedings go to show that actually the initial grant was never revoked as a result of this application and the initial administrators were never substituted until much later on.

(iii) Ruth Wanjiku Wachira eventually died on the 24/7/2002 whereas Peter Maina had passed on on 3/3/2003. Beatrice Wairimu widow of Peter Maina succeeded him vide succession cause No.1492/2003. The properties forming the estate of Peter Maina comprised all that Peter had allegedly inherited from the deceased subject of these proceedings vide the court order made here on on 3/3/98. It transpired that in fact some of these properties were disposed of speedily upon Beatrice getting confirmation grant to the estate property among them a highly contested property namely LR. 209/6419 which had allegedly been the parental matrimonial home in Nairobi.

(iv) The events described in (iii) above culminated in the filing of an application dated 17/2/2006 seeking revocation of the grant initially issued to Ruth Wanjiku Wachira and Samson Kabare with accompanying reliefs seeking preservation of the estate property and in particular LR. 209/6419. This eventually culminated in the issuance of the grant in the names of Anne Njeri Knott and Elizabeth Nyambura. A grant of representation was duly extracted and the two set about administering the estate of the deceased and in fact transferred some estate property into their names as administrators. It has also been alleged and admitted by Anne Njeri Knott that she in fact collected income and applied it towards the

improvement of estate property as well as general upkeep and modedal care for the widow until her death (widow).

(v) The issuance of the grant in favour of Anne Njeri Knott and Elizabeth Nyambura raised opposition from the three widows of the deceased sons namely Winnie Wangui, Jane Wambugu and Beatrice Maina. These three moved either separated or jointly to file applications seeking annulment of the grant issued on 15/5/2007 for the reasons already assessed herein but more particularly that the estate had been finally distributed by the orders of 3/3/98 and according to them there was nothing else left to administer or distribute and protested and termed as harassment the actions of the incoming administrators. It is evident from the survey done in the back ground information that these applications were heavily contested but had not been procedurally determined and are still pending on the record but their pendency notwithstanding and as indicated in the background information it is on record that parties agreed to have the grant to be issued in the names of their advocates on record.

Current application for provision for a dependant filed on 2/3/2009.

(i) It was presented by Beatrice Wairimu. The major complaint advanced by her has been that despite the orders made on 3/3/98 she has not benefited from the estate property distributed to her deceased husband some of which have not even found their way into her names.

(b) That there has been a lot of interference from the daughters of the deceased who according to her should not benefit from the estate of the deceased in accordance with Kikuyu customary law, a position taken and supported by the other widows of the other two deceased sons namely Winnie Wangui and Jane Wambugu.

(c) The scenario presented by the stand of Beatrice Wairimu as supported by Winnie and Jane is that the orders of 3/3/98 have not served the best interests of the parties herein.

(ii) The other two supporting widows namely Winnie Wangui and Jane Wangui have also sought to be provided for in their representations to court.

(iii) The daughters on the other hand together with a representative of a deceased daughter also ask to be provided for. Their stand is that they were short changed by their sisters in laws and their then surviving brother arising from their deceased mothers inability to distribute the estate to them soon after the grant had been confirmed in her favour. They also maintain that whereas their sisters in laws have been benefiting from 80% of the estate property, they have languished in poverty.

(iv) The assessment of the paper work filed by all on board demonstrate clearly that the pendency of these proceedings has generated acrimony amongst the family members resulting in the creating of a clear rift between the daughters of the deceased on the one hand and their sisters in laws on the other hand.

(v) The advocates on board now have the duty of doubling up as administrators of the estate of the deceased with a primary duty of having the best interests of the estate at heart as well as being advocates for their respective clients who are in fact the ultimate beneficiaries of the said estate. They are therefore enjoined to balance issues of conflict of interest to avoid injustice either to the estate in general, their clients or the other beneficiaries with equal competing interest to the estate.

(vi) There is an apparent admission of gifts intervivos having been made by the deceased mostly gifts of land to the sons some of which portions are being enjoyed by the widows. It has been a general trend in the depositions of the widows of the deceased sons that these gifts intervivos should not be distributed and instead they should be effected. This position has been confirmed by Dorcas and her group that this should be the position whereas Anne Njeri Knott and her group were of a different view that where transfer had not been effected in favour of the beneficiaries during the life time of the deceased, these properties should revert back to the estate as distributable assets. It is however clear that apart from one property Loc.14/Nyakianga/1024 which was allegedly registered in the names of the beneficiary during the life time of the deceased, the rest were not so effected. It is also apparently clear

that there is no documentary proof of these allocations and what the court has is in effect the word of those who assert that these were gifts *inter vivos* and the words of those who deny it.

(vii) It has also come out clearly that although the widows of the deceased sons have all along maintained that the orders of 3/3/98 were valid and were given effect to, despite the length of time that has passed since these were endorsed by the court, they have not succeeded in vesting the beneficiaries of those orders with the properties the orders meant to benefit them with. The stand of the daughters with regard to those orders is that these orders are illegal, irregular unprocedural and therefore annulity and they account for the mess that the estate has found itself in hence the protraction of this litigation.

(viii) It has also transpired that indeed this vast estate had income generating properties but there are no proper accounts on how much was collected on what or to whom the said income was shared out to or applied right from the time the widow took over the estate to the present day. It is indeed on record that some of those on board i.e Anne Njeri Knott and Jane Wambugu have filed what they purport to be accounts of whatever they managed to get hold of as income from the estate property but there are no supporting documents to prove the disbursements of those sums. It is clear that the current administrators have not filed any statements of accounts citing inability to access the required information citing uncooperation the beneficiaries on board.

(ix) It is evident that the only income which has managed to be collected and availed to the beneficiaries was the income realized from Thuru Rhuru house. It is also evident that after deduction of legal fees due to the advocates on board, the said amount was shared into four portions. Three portions went to the three widows of the deceased sons. While the 4th portion meant for the deceased widow appears to have found its way to the daughters as it was confirmed by Dorcas and her group that indeed they had received some benefits.

Shares

(i) It is common ground that the deceased had shares in various companies which had been enumerated. Although the certificate numbers had been indicated, copies of the shares certificatea were not exhibited.

(ii) It is evident that these were allegedly shared out by the orders of 3/3/98 in equal shares to the widow, 2 widows of deceased sons and the then only surviving son Peter Maina in equal shares. There is conflicting evidence on the record regarding the current position of these shares. Some beneficiaries have alleged they were disposed off by Peter Maina while others say that they are still in existence. What is surprising is that neither participating parties herein made efforts to seek clarification from the respective companies where these shares are allegedly held where the said shares are held. Further the fact that Beatrice Wairimu whose husband is alleged to be the master mind behind the disposal of the said shares has claimed that provision be made for her from these same shares, this coupled with lack of production of documentary proof on their disposal casts doubt as to their having been disposed off.

(iii) There was revealed additional shares from two new companies for the representation of Dorcas namely Kiru (Kairo) stores and Kiru investments. Like the other counter parts no documentary proof of their existence was exhibited.

Motor vehicles.

None featured in the proceedings until 2010. These were introduced by Anne Njeri Knott and her group and confirmed by the group of Dorcas. As indicated earlier on, they were only mentioned. No documentary proof was exhibited. It was however admitted by Beatrice Wairimu and Jane Wambugu that indeed these were in existence one was alleged to have been taken to an unknown garage by the late Peter Maina and its current condition then was unknown. While the second one was alleged to have belonged to Hezekiah Wambugu and was under the control of Jane Wambugu. No documents were exhibited.

Cows and calves

These too had not featured in the proceedings earlier on. They were alleged to have been disposed off by Peter Maina.

PRINCIPLES OF LAW APPLICABLE.

(1) It is trite and this court has judicial notice of the fact that since it is undisputed that the deceased was domiciled in Kenya, the law applicable to the disposal of the deceaseds' estate is the current law of succession Act cap 160 laws of Kenya in terms of section 4 thereof. In order for the competing interests on either side of the devide to stand, each side has to demonstrate that they either stand or are ousted by the provisions of the same Act. Sections 2(1) (2) provides:-

“(1) Except as otherwise expressly provided in this Act or any other written law of Kenya in respect of , the provisions of this Act shall constitute the law of kenya in respect of and shall have universal application to, all cases of intestate or testamentary succession to the estate of deceased persons dying after the commencement of this Act and to the administration of estates of those persons.

(2) The estates of persons dying before the commencement of this Act are subject to the written laws and customs applying at the date of death, but nevertheless the administration of their estates shall commence or proceed so far as possible in accordance with this Act

(3)....

(2) Sections 31 and 32 of the Act excludes the application of the provisions of the Act to Agricultural land and crops growing thereon or livestock in such areas as the Minister may by notice in the gazette specify. Where such gazette and specification has been made by the relevant minister, the law applicable to the distribution of the said properties should be the law or custom applicable to the deceased community or tribe as the case may be.

(3) The deceased herein left no will and by reason of this, the deceased is deemed to have died intestate in respect of his free property of which he has not made a will which was capable of taking effect. For this reason the provisions of the Act which are of concern to the court are those which cover the distribution of an intestate estate.

(4) Vide the provisions of section 66(a) the deceased widow Ruth Wanjiku Wachira ranked in priority over other contending beneficiaries when it came to the issuance of the grant to the deceaseds' estate. There is mandate to issue to the widow either alone or jointly with another. It is therefore the finding of this court that the initial grant issued to Ruth Wanjiku Wachira and Samson Kabare had been procedurally and properly issued.

(5) Vide section 29(a) a dependant is defined as a wife and the children of the deceased. The court is therefore satisfied that the listed persons fall into this category and have therefore laid lawful claims to the deceaseds' estate.

(6) Vide section 26 thereof, there is provision for mandate for a dependant to seek provision for himself/herself as a dependent. It is therefore the finding of this court that the application by Beatrice Wairimu is procedurally before this court and she is entitled not only to a remedy in respect thereof but to an effective remedy.

(7) Vide the same provision of section 26 of the Act, the addressee of the command therein is the executor of a will or a personal representative. Herein noting that there is no executor the proper addressee of the command is the personal representative of a deceased's estate.

(8) A personal representative is defined as the executor or administrator of a deceased person. Vide section 79 of the Act, the executor or administrator to whom a grant of representation has been granted shall be the personal representative of the deceased for all purposes of that grant and subject to any limitations imposed by the grant all the property of the deceased shall vest in him as a personal

representative. Vide section 80(1) of the Act the grant takes effect upon its issuance.

By reason of the said vesture of authority vide the grant of representation the personal representative has a mandate to exercise the powers donated by sections 26,82 and 83 of the same Act with the only caveat being that they have to observe any limitations in the grant. The grant exhibited herein had no limitation.

(9) Vide section 28 of the Act thereof when making provision for a dependant, the court is enjoined to be guided by parameters provided by the said section namely the nature and amount of the deceased's property, any past, present or future capital or income from any source of the dependant, the existing and future means and needs of the dependant, whether the deceased had made any advancement or other gift to the dependant during his life time, the conduct of the dependant in relation to the deceased, the situation and circumstances of the deceaseds' other dependants and the beneficiaries under any will and the general circumstances of the case including so far as can be ascertained the testators' reasons for not making provision for the dependant.

(10) Other relevant prescription relevant to the interrogations herein are those relating to the procedure adopted in the issuance of the confirmed grant of 7/10/87 and how the failure to observe certain prerequisites led to the scenario currently prevailing in these proceedings.

(a) Vide section 71 thereof, a confirmation order issues where the court is satisfied that the grant holder will administer the estate according to law. The provisal to section 71(2) provides:-

“Provided that in cases of intestacy the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled and when confirmed the grant shall specify all such persons and their respective shares.”

Herein the initial grant had identified beneficiaries and shares namely that the property was to devolve to the widow to hold the property in trust for all children.

(11) From the lengthy assessment of the facts herein, the afore stated position held until the grant was revoked in 2007 in favour of Ann Njeri Knott and Elizabeth Nyambura and subsequently replaced by the grant currently held by the advocates on record.

(12) Other rprescriptions relevant to the assessment herein are section 92 (1) wherein if a grant holder makes a payment or a disposition in good faith is protected for doing so notwithstanding any defects or circumstances whatsoever affecting the validity of the grant. Secondly where a grant is revoked or varied, payments and dispositions made in good faith to a personal representative under that grant before the revocation or variation, thereof shall be valid discharge to the person making them. Vide section 93(1) thereof, a transfer of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person to whom representation had been granted shall be valid notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act. Further, a transfer of immovable property by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser had notice that liabilities owed by the estate had not been catered for.

(13) Vide section 35 of the same Act, where there is no continuing trust the widow retains a life interest in the property terminable upon death or re-marriage. The widow in her capacity as holder of the grant has power either on her own motion or upon request or application by any of the beneficiaries to make provision for the dependant or beneficiary requestin. The yard stick to be applied in such circumstances is the same yard stick provided for in section 28 of the Act when making provision for a dependant namely to consider the nature and amount of the deceaseds' property, any past, present or future capital or income from any other source of the applicant and of the surviving spouse, the existing and future means and needs of the applicant and the surviving spouse, whether the deceased had made any advancement or other gift to the applicant during his life time or by will, the conduct of the applicant in relation to the deceased and to the surviving spouse, the situation and the circumstances of any other person who had any vested or contigenet interest in the net estate of the deceased or as a beneficiary

under his will if any and the general circumstances of the case including the surviving spouses reasons of withholding for exercising the power in the manner in which he or she did, and any other application made under this section. Vide section 35(5) of the same Act, upon the death of the surviving spouse the property devolves upon the surviving children in equal shares. Vide section 42 of the same Act, where an intestate has settled any property during his life time or by will paid given or settled any property to a child, grand child or house or property has been appointed or awarded to any children or grand child under the provisions of section 26, or section 35, that property is required to be taken into account in determining the shares of the net intestate finally accruing to the child, grand child or that house vide section 41 of the same Act, interest of a child or children of the deceased either predeceasing him or die before distribution are protected and are required to be held in trust for the said child or children and their descendants.

This court has made due consideration of the afore set out principles of law and applied them to the findings of facts made herein and it proceeds to draw out the following conclusions on the same:-

1. Application of customary law is limited to agricultural land, crops growing thereon and livestock in areas gazetted by the Minister. Herein there has been no deponent put forth or representations made by any of the beneficiaries on board that the numerous parcels of land left by the deceased which are in contest herein were in fact in a gazetted area. In the premises it is the finding of this court that the law applicable to the disposition of the estate of the deceased subject of these proceedings is the law of succession Act and not customary law as contested by the widows of the deceased sons of the deceased.
2. It has not been disputed that the intention of the deceased and his deceased widow was to have all their children benefit from the property generated during their life time. This has come out clearly from existence of proof that Anne Njeri Knott was given a portion of land during the deceased's life time and secondly the first confirmed grant indicated clearly that the widow was to hold the property for the benefit of all the children.
3. Besides the assertion of Winnie Wangui, Jane Wambugu and Beatrice Maina that daughters are not entitled to inherit under Kikuyu customary law, there is nothing on the record to show that it was the deceased's wish that his daughters whether married or not should not inherit his property. This is borne out clearly by the fact that it is admitted that one of the daughters was given land as a gift *inter vivos* and also a sister to the deceased also received land as a gift *inter vivos*. This is not conduct of a deceased person who would have wished his daughters whether married or not to inherit him. In the case of **Rono versus Rono and another (2008) 1KLR (G&F)803** where the high court, Nambuye J as she then was applied Kalenjin customary law and withheld inheritance from the daughters of their deceased fathers estate on account of application of customary law and the fact that they were either married or they would get married, the court of appeal held *inter alia* that:-
 - (i) **The application of customary law was expressly excluded unless the succession Act itself made provision for it as was done in section 32 and 33 in respect of agricultural land and crops growing thereon or livestock where the customs of the deceased's community was applicable.**
 - (ii) **The customs of the deceased's community was limited to the areas specified by the minister in the gazette notice.**
 - (iii) **The fact that the girls would one day get married was not a determining factor when it came to the distribution of the net estate of the deceased. The court had a duty to exercise its discretion judiciously when it came to distributing the estate.**
 - (iv) **The deceased treated his children equally and therefore the court should have done the same...**
4. In view of the existence of the clear provisions of law that the only person who has authority and power to deal in and with the property forming an intestate estate is the person who is a holder of a grant of representation to that estate. It therefore follows that the deceased widows' action and or conduct of purporting to donate a power of Attorney to her daughter the late Josephine Wangare with power to deal

with the estate property on behalf of the deceased widow as if the said Josephine Wangere was the widow executing the said mandate was nothing but a nullity because the holder of a power of Attorney on behalf of a grant holder is not recognized under the law of succession Act. It therefore follows that whatever actions that the late Josephine Wangere may have done in relation to the deceased property inclusive of the signing of any transfer in favour of either the beneficiaries or of 3rd parties were and still are all null and void and cannot be protected by law.

5. Further fortification of this court's finding of nullity with regard to the actions done by the late Josephine Wangere under a purported power of Attorney is from there being in existence undisputed facts that the purported donor of the said grant had in fact suffered a stroke and was therefore rendered bed ridden and both physically and mentally incapable of making independent informed judgments and was even unable to manage the affairs of the estate necessitating the said late Josephine Wangere moving to court to seek orders of court to be appointed a guardian for the said Ruth Wanjiku Wachira which orders were granted. The said Josephine Wangere was replaced by Anne Njeri Knott who held fort till the deceased passed on in the year 2004. It is therefore the finding of this court that the said power of Attorney is suspect. More so when it was not even registered and none of the other daughters and the then surviving son had knowledge of its existence. They too treated it with suspicion and that is why they raised objection to it and the transactions purportedly undertaken under its authority. Further finding is that the law is clear and trite and this court has judicial notice of the same that in the absence of its having been registered, it had no force of law. What the deceased widow Ruth Wanjiku Wachira should have done should have been to apply for the rectification of the grant to have either her name removed or her daughters named added as a co-administrator with the approval knowledge and consent of the other beneficiaries of course.

6. Flowing up from the finding in number 5 above, in the effect and or impact of the orders made by Kuloba J as he then was on 3/3/98 whereby authority was given to the Deputy registrar of the court to execute transfer documents on behalf of the administrators, the execution of transfers intended to be fruitified by those orders was the one which had allegedly been effected by the schedule which had allegedly been refilled in court on 25/2/98. On the basis of the lengthy survey of facts and assessment done herein, it is the finding of this court that the orders of 3/3/98 do not hold. They are a nullity and void abinitio for the following reasons:-

(a) A deputy Registrar is not recognized by law as an agent of an intestate estate as he is not a holder of a grant of representation and for this reason the court should not have mandated him to execute or transfer documents on behalf of the administrators.

(b) The court had deponements before it and in fact an application which was pending by one of the administrators Samson Kabare that he had never been involved in the administration of the estate and that the deceased widow Ruth Wanjiku Wachira who had been the co administrator had kept him in the dark over the affairs of the on goings on in the estate and as such he could not have been compelled to execute transfer documents.

(c) The court also had knowledge from the content of the deponements on record of the beneficiaries of the orders of 3/3/98 that the other surviving administrator Ruth Wanjiku Wachira had in fact become incapacitated by reason of suffering a serious disabling stroke and was therefore incapable both physically and mentally to execute any transactions with regard to her duties as an administrator. In fact this was one of the reasons as to why the application of 11/3/97 which led to the orders of 3/3/98 had been filed.

(d) The court was aware that the initial confirmation made on 7/10/87 had only one mode of distribution namely that the widow was to hold the properties for the benefit of all the children. The court was alive to the fact that the said certificate underwent subsequent rectifications but these were limited to additions of property belonging to the estate which had been subsequently discovered.

It did not alter the mode of distribution. It therefore follows that in order for the alleged refilled schedule to hold there had to be demonstration that the mode of distribution approved on 7/10/87 had changed. In addition to this the court was obligated to alert all those whose interests had been vested by the orders of

7/10/87 normally al children of the impending orders on a changed mode of distribution. More so when there is no demonstration that the widow participated in the compiling of the said schedule.

(e) The said schedule whose copy the court has assessed and reproduced herein is suspect in that it purports to be dated 7/10/87 and yet it includes and or makes provision for properties which were subsequently added by court orders upto the year 1992. This court does not see how property discovered and added by a court order of 1992 could have been within the knowledge of the widow in 1987 and then she failed to invent the same. The court says without hesitation that this was a clear forgery which the court then seized of the matter did not interrogate as it should have been required to do.

(f) In the wake of existence of demonstration that the administrator on board had been incapacitated one by reason of being kept in the dark, and another by reason of both physical and mental infirmity, the best action the court should have taken should have been to accede to the order of revocation of the grant and then appoint new administrators and mandate them to distribute the estate property and wind up the estate and a fresh grant of representation issued considering that the initial grant had been truly rendered useless. The new action to be taken by the court had to ensure that all interested beneficiaries are brought on board and made to participate in it, something not done by the this court previousl.

7. Flowing from this court's finding in number 5 and 6 above before proceeding further herein, the court has to deal with the issue of what impact the above identified illegalities, nullities and irregularities going to have on the on goings in the affairs of the estate. This court wishes to draw inspiration from Nambuye J as she then was in her decision decided on the 24th day of September, 2010 in the case of Karagita Self help Group versus Thika River Estate Nairobi HCCC No.2561 of 1994. At page 14 of the Judgment Nambuye J as she then was drew inspiration from the decision of Nyamu J as he then was in the case of Republic versus the Business Premises Rent Tribunal Respondent Lenco Investments Limited Interested Party and Samina Investments Limited Exparte Applicant Nairobi Misc. Application Number 562 of 2007 in which the learned Judge encountered nullities and illegalities and provided the following guidelines on how to deal with nullities namely:-

(i) Annulity is a nullity and always remains a nullity.

(ii) If nullities are condoned by the courts of law, they are capable of clogging the justice system, erode its effectiveness and respect of the rule of law.

(iii) Failing to act in the circumstances would be a serious abdication of the seat of justice and judicial authority.

(iv) The principle to be observed is the principle that no litigant should be allowed to benefit from irregularities or nullities since these would be against the policy of law.

(v) Nullities are defects and cobwebs in our legal system which if allowed to remain, would discredit and litter and derail the administration of justice in accordance with the law.

(vi) It would be unjust for the court not to intervene in the face an illegality or nullity where the tribunal and the lower court had no jurisdiction from the word go.

(vii) Where preservation of the status quo is a threat to the rule of law, the conscience of this court, the spirit and its sense of justice cannot allow the preservation of the status quo.

(viii) It cannot be good law to allow a party benefit from a blatant violation of the law.

8. The court wishes to adopt the said principles and makes a finding that they apply to civil litigation as well as succession litigation and when applied herein, it is the finding of this court that the order of 3/3/98 cannot and should not hold and should not have been allowed to hold because allowing them to stand would clog the course of justice herein as they have surely done as demonstrated by the background information survey. They operated as a stumbling block in the realization of the fruits of devolution of the

estate property even to the alleged apparent beneficiaries of the said orders one of whom Beatrice Wairimu Maina has been forced to come back to the seat of justice to seek provision for a dependant and yet her deceased husband had been adjudged a beneficiary of the loan share of the deceaseds' estate by the said orders. Further if allowed to stand they will clog and curtail the free exercise of the courts discretion in making provision for a dependant as is required by the provisions of section 35 and 28 of the law of succession Act.

9. A question arises as to whether this court is in a position to interfere with the orders of 3/3/98 firstly considering that it has not been procedurally invited to do so and secondly considering that it is now trite and this court has judicial notice of the same that there is in existence a cardinal guiding principle that a court of law has no business granting reliefs it has not been procedurally invited to grant. The court's response to the question is that the same is answered in the affirmative. The reason for saying so is that there is jurisdiction and mandate donated by rule 73 of the probate and administration rules. It provides:-

“Nothing in these rules shall limit or otherwise affect the inherent power of the court to make orders as may be necessary for the ends of justice or to prevent abuse of the process of the court” When applied to the scenario herein, the court is satisfied that this court is entitled to exercise its inherent jurisdiction under the said rule to vacate the orders of 3/3/98 for the following reasons:-

(i) They were a nullity and like all other nullities they were void ab initio and non-existent and that which does not exist is nothing but a void space.

(ii) It has been demonstrated above, that they have been a clog in the realization of the ends of justice for the would have been beneficiaries as well, and the court says without hesitation that they have been responsible for the courts and the beneficiaries failure to bring this litigation to an end.

(iii) Their continued existence will curtail this courts exercise of discretion in making provisions for a dependant sought herein and give justice to the other beneficiaries who also need to be catered for.

(iv) From the content of the record they are the source of abuse of the court process herein.

For the reasons given above the court makes an order vacating the orders made herein on the 3/3/98 solely on the courts own motion and in the exercise of its inherent jurisdiction under rule 73 of the probate and administration rules and for this sole reason that it is in the best interests of justice to all those on board that they should be alerted in order for the beneficiaries to be enabled to bring this litigation to an end.

10. The question that arises for determination now is what is the effect of this courts vacation of the orders of 3/3/98 on the general trend that the proceedings herein are to be steered towards. The courts response to that question is that the vacation of those orders is to restore the position of the estate of the deceased and the condition of the property were in as at July, 2004 when Ruth Wanjiku Wachira passed on namely that the estate had not been distributed by the initial administrators. This state of affairs was not at all altered by the issuance of the grant to Anne Njeri Knott and Elizabeth Nyambura who did not even administer it fully citing hostility from their sisters in laws. The same thing applies to the current administrators who claim to be unable even to apply for confirmation citing hostility amongst the beneficiaries.

11. The findings in number 11 above leads the court to the determination as to which is the best way forward for this court to adopt in determining the application for provision of a dependant which is the subject of this ruling. In this court's opinion, the best way forward herein is to bring all the beneficiaries and all the properties forming the estate on board when making a determination of the said application. The reasons for saying so is derived from the provisions of sections 35 and 28 of the parent Act which as assessed above enjoins this court when making provision for a dependant to consider the interests of other competing interests and or claims to the estate by other dependants so that they can also be catered for. Secondly such a mode of approach will assist the incumbent administrators in expediting the application for confirmation so that the litigation herein can be brought to an end in the best interests of

all those on board.

The way forward on identification of would be beneficiaries for an order for provision of a dependant/dependant.

On the basis of the findings made by the court herein the court proceeds to make a finding that the following have been identified by the court as would be beneficiaries for an order for provision of a dependant/dependant

Daughters

1. Anne Njeri Knott
2. Estate of Josephine Wangare.
3. Mary Wairimu Kahia.
4. Dorcas Wanja Wachira
5. Millicent Wangui Wachira.
6. Catherine Elizabeth Nyambura Wachira.

On behalf of deceased sons namely Timothy Macharia Wachira, Hezekiah Wambugu Wachira, and Peter Maina Wachira

7. Winnie Wangui Macharia widow of Timothy Macharia Wachira.
8. Jane Wanjiku Wambugu widow of Hezekiah Wambugu Wachira.
9. Beatrice Wairimu Maina widow of Peter Maina Wachira.

Identification of Distributable Estate property.

Land:

The court proceeds to make findings that it is common ground that the following form the landed distributable property:-

1. LR. Loc.14/Kiru/1965/6
2. LR. Loc.14/Kiru/54
3. LR. Loc.14/Kiru/44
4. LR. Loc.14/Kiru/2732
5. LR. Loc.14/Kiru/1751
6. LR. Loc.14/Kiru/2725
7. LR. Loc.14/Kiru/897
8. LR. Loc.14/Kiru/1793
9. LR. Loc.14/Kiru/2723

Urban/Town Property

10.LR. No.209/6045- Shauri Moyo

11.LR. No.209/6419-Shauri Moyo

12.LR. No. 209/6008- Maringo

13.LR. No.209/2716/209/785/17 Thuru Thuru House.

Approved Effected Gift Intervivos.

14.LR. No.19/Nyakianga/1024.

15.LR. No.Loc.14/Kiru/897- 5 acres to Anne Njeri Knott and 5 acres to Jemima Njumbi sister to the deceased.

SHARES IN VARIOUS COMPANIES

16.ICDC Investment Co. Ltd share certificate No.28005 & 13035,055087 and 654948.

17.EA Breweries Ltd- share certificate No.0254369.

18.Kenya Breweries Ltd share certificate No.0320022 & 026058.

19.Munyaka Kuna Co. Ltd share certificate No.173

20.Sukuma Wiki Co-operative Society Ltd-share certificate No.173.

21.BAT (Kenya) Ltd share certificate No.4511

22.Equity Building Society Investmeent – share certificate No.6735-13&6729-13

23.Kiru Traders Lts.

Shares Added by the Representations of Dorcas Wanja Wachira/Millicent Wangui Wachira and Elizabeth Nyambura Wachira.

24.Kiru Investments shares.

Banks Accounts

25.Equity Bank Ltd- Savings Accounts No. 05-08145

26.Muranga Farmers Cooperative Union Ltd Savings A/C No.0338-05374.

27.Kenya Commercial Bank Golden A/C/No.172244558.

28.Kenya Commercial Bank Golden A/C/No.143-063,386.

Property to be excluded from Distribution on Provison for a Dependant/Dependants

29.Gifts intervivos which were effected during the life time of the deceased as indicated above.

30.Shauri Moyo Nyama land.

31. Jericho Lumumba House No. AB-35847.

32. Motor vehicle Reg. No. KPQ003-Volvo station Wagon.

33. Motor vehicle Reg. No. KTZ 300-Datsun double cabin pickup.

Reasons for Exclusion:

(i) The deceased widow did not apply to include them in the application for rectification of grants mentioned above.

(ii) It is common ground that Nyama Land and the house at Shauri Moyo namely Jericho Lumumba house No. AB35847 are city council properties. All that the deceased did was to run businesses on them at a rental value payable to the city council. In the premises it can not be said that these were free properties which the deceased could have disposed off freely without the consent and or approval of the City Council of Nairobi.

(iii) As for the motor vehicles, no records were availed to confirm the ownership. This coupled with evidence on record from the assessment that KPQ003 Volvo Station Wagon Saloon had been taken to unknown garage by the late Peter and its current condition is unknown. Whereas it is said that motor vehicle Reg. No. KTZ 300 Datsun double cabin pick up had been given to Hezekiah Wambugu during the deceaseds' life time and that the said Hezekiah had exclusive use of the same, it is safe to exclude it from the list of distributable assets for purposes of identification of property for purposes of provision for a dependant/dependants.

Income Generating Properties to be Given Special Consideration.

34. LR. No. 209/6008 under the care, control and use by Jane Wanjiru Wambugu.

35. LR. No. Loc.14/Kiru/1965/6 under the care, control and use of Winnie Wangui Macharia.

36. LR. No. 209/6045 which had been given to late Peter Maina and which was allegedly disposed off by the late Peter. The proceeds of sale are deemed to have been applied to the exclusive use of late Peter Maina and his house holds as there is no mention that he gave to other users.

37. Loc. 14/Kiru/1965/44 which is under the care, control and use by Beatrice Wairimu Maina through currently registered in the name of Anne Njeri Knott and Elizabeth Nyambura Wachira as administrators.

38. LR. No. 209/6419 which had allegedly been sold to a Mr. Kagoiya by Beatrice Wairimu on account of this property having been given to the late Peter pursuant to the orders of 3/3/98 which this court has declared to be nullity. The evidence assessed indicates that this property is currently registered in the joint names of Anne Njeri Knott and Elizabeth Nyambura as administrators of the estate of the deceased. This registration followed the issuance of the orders of 17/5/2007 which vested the administration of the estate of the deceased Anne Njeri Knott and Elizabeth Nyambura. It is on record that the said vesture was divested from the said two when the current administrators came on board.

39. LR. No. 209/2716/209/785/17 Thuru Thuru house. Currently its income benefits all the beneficiaries of the deceaseds' estate as identified above.

Provisions for Dependant/Dependants.

(A) **SHARES IN VARIOUS COMPANIES** as in numbers 16-24 above. All the shares enumerated above in ICDC Investment Co Limited, EA Breweries Limited, Munyaka Kuna Co. Limited, Sukuma Wiki Cooperative Society Limited, BAT (Kenya Limited, Equity Building Society Investment Limited, Kiru Traders Limited and Kiru Investments shares are directed and ordered to be sold and the resulting proceeds to be shared Equally amongst the following beneficiaries namely Anne Njeri Knott, Estate of

Josephine Wangare, Mary Wairimu Kahia, Dorcas Wanja Wachira, Millicent Wangui Wachira, Catherine Elizabeth Nyambura Wachira, Winnie Wangui Macharia, Jane Wanjiru Wambugu and Beatrice Wairimu Maina.

(B) Proceeds of Bank Accounts.

Namely Equity Bank Limited Account No.05-08145, Muranga Farmers Cooperative Union Savings Limited A/C No.6338-05374, Kenya Commercial Bank Golden Account numbers 172244558 and 143-063-386. All these are to be collected and shared equally between Anne Njeri Knott, Estate of Josephine Wangare, Mary Wairimu Kahia, Dorcas Wanja Wachira, Millicent Wangui, Millicent Wangui Wachira, Catherine, Elizabeth Nyambura Wachira, Winnie Wangui Macharia, Jane Wanjiru Wambugu and Beatrice Wairimu.

Individual Provision for A dependant/Dependants.

(A) Ann Njeri Knott Alone.

- (1) LR. Loc.14/Kiru/897-5 acres.
- (2) LR. Loc.14/Kiru/2723.

(B)Winnie Wangui Macharia.

- (1) Loc.14/Kiru/1965/6 as an income generating property.
- (2) Loc.14/Kiru/1751.
- (3) Loc.14/Kiru/2720
- (4) Loc.14/Kiru/2725- ¼ share
- (5) Loc.14/Kiru/2732- ¼ share

(C)Jane Wanjiru Wambugu.

1. LR. Loc.14/Kiru/4135- whole
2. LR. Loc./Kiru/2732- ¼ share
3. LR. Loc.14/Kiru/2725- ¼ share
4. LR. Loc.19/Nyakianga/1024- whole
5. LR.209/6008- Maringo as an income generating property.
6. LR. No. Loc.14/Kiru/2722
7. LR. No. Loc.14/Kiru/2721

(D)Beatrice Wairimu Maina.

- (1) LR. No. 14/Kiru/1965/44 as the income generating property.
- (2) LR. 209/6045 Mbotela (sold by the late Peter and the proceeds deemed to have been applied to his benefit and that of his house hold to the exclusion of other beneficiaries.
- (3) Loc.14/Kiru/2719 (being ¼ share of LR. No. Loc.14/Kiru/2732)

(4) LR. Loc.14/Kiru/4136 exchanged with Loc.14/Kiru/2452.

(5) Loc.14/Kiru/2725- ¼ share.

(E) **Winnie Wangui Macharia, Jane Wanjiru Wambugu and Beatrice Wairimu Maina.**

(1) LR. Loc.14/Kiru/1965/54 in equal shares being the property currently housing a Kobil Petrol Station.

(F) **Estate of Josephine Wangare, Mary Wairimu Kahia, Dorcas Wanja Wachira, Millicent Wangui Wachira and Catherine/Elizabeth Nyambura.**

(1) Loc.14/Kiru/4134

(2) Loc.14/Kiru/2725- ¼ share

(3) Loc.14/Kiru/2732- ¼ share

These were the portions which had been given to the widow Ruth wanjiku Wachira. They will be shared equally amongst the above named five daughters. Anne Njeri Knott has been excluded from sharing in these properties because she has already benefited from two of the deceaseds' properties as gifts intervivos while her other sisters do not appear to have been given any gift intervivos.

(G)**Income generated from the Petrol station on LR. No. Loc.14/Kiru/1965/54.**

The income generated on this plot **upto the date of the delivery of this ruling** is to be shared equally amongst Anne Njeri Knott, Estate of Josephine Wangare, Mary Wairimu Kahia, Dorcas Wanja Wachira, Millicent Wangui Wachira, Catherine Elizabeth Nyambura Wachira, Winnie Wangui Macharia, Jane Wanjiku Wambugu and Beatrice Wairimu Maina.

(ii) The income generated from this property **from the date of the delivery of this ruling** is to be shared equally among Winnie Wangui Macharia, Jane Wanjiru Wambugu and Beatrice Wairimu Maina in equal shares as the property has been provided for them as dependants.

(H)**Income generated from LR. 209/6419** upto the date of delivery of this ruling to be accounted for fully by Anne Njeri Knott and the same to be shared equally amongst Anne Njeri Knott, Estate of Josephine Wangare, Mary Wairimu Kahia, Dorcas Wanja Wachira, Millicent Wangui Wachira, Catherine Elizabeth Nyambura Wachira.

(I) Income generated from LR. 209/2716 & 209/785/17- Thuru Thuru House **upto the date of the delivery of this ruling** to be shared equally between Anne Njeri Knott, Estate of Josephine Wangare, Mary Wairimu Kahia, Dorcas Wanja Wachira, Millicent Wangui Wachira, Catherine Elizabeth Nyambura wachira, Winnie Wangui Macharia, Jane Wanjiru Wambugu and Beatrice Wairimu Maina.

(J) **Anne Njeri Knott ,Estate of Josephine Wangare, Mary Wairimu Kahia, Dorcas Wanja Wachira, Millicent Wangui Wachira and Catherine Elizabeth Nyambura Wachira** to share equally the following remaining properties:-

(1) LR. No.209/6419

(2) LR.209/2716&209/785/17 Thutu Thuru house.

Reasons

(a) As per the provisions of section 35(5) of the law of succession Act all the children of the deceased both daughters and sons are supposed to have shared equally all the properties comprising the estate of the deceased. It was not possible for the court to apply this rule strictly because of there being in existence

demonstration that the deceased had heavily leaned towards his sons when making out gifts *intervivos*. Only one daughter Anne Njri Knott benefited from the gift *intervivos*.

(b) Since the law demands that these be taken into account when making provision for a dependant, there is no way these could have been ignored and when so considered, it is evidently clear that the lions share of the deceaseds' property has gone to benefit the deceased sons and their house holds.

(c) Since some of the properties given by the deceased as gifts *intervivos* have already been registered in the names of the intended beneficiaries, ordering a reversal will not be in the best interests of all the beneficiaries on board considering that the protraction of the proceedings has generated a lot of acrimony amongst them and polarized their relationships and yet they are siblings sharing same parents. There is no need to aggravate the current situations further.

(d) As observed during the assessment, there is nothing to show that the deceased parents never intended the daughters to benefit from the balance of the remaining free property.

(e) These two are the only remaining free property belonging to the estate of the deceased which the deceased had not ear marked for any of the beneficiaries as gifts *intervivos* and which the court can use to make provision for any other dependants not adequately provided for by the deceased.

(f) It is undisputed that this property LR.NO. 209/6419 had belonged to the estate of the deceased and was purportedly given to the late Peter Maina pursuant to the now declared null and void orders of 3/3/98. For this reason and also for the reasons given in the assessment, with regard to the said orders of 3/3/98, the court makes a finding that the late Peter Maina was not properly and procedurally distributed the said property as a beneficiary of the estate. It therefore follows that the same property was not properly and legagly invented as property forming his estate of the deceased herein. If not procedurally vested in the said estate and it was properly reclaimed by Anne Njeri Knott and Elizabeth Nyambura as the then administrators of the estate subject of these proceedings

(g) **The attendant prayers 3 and 4 of the application filed on 2/3/2009.**

After due consideration of the afore mentioned prayers and upon application of the relevant provisions of law to them the court is inclined to allow them for the following reasons:-

(a) There are administrators already on board.

(b) The excuse the administrators gave for not moving diligently to present accounts and apply for confirmation of the grant was because they met alleged hosilities and un cooperation from the beneficiaries on board with regard to identification of properties belonging to the estate and secondly with regard to who has been collecting income from which properties and how the same has been applied. Parties have all participated in providing information on the identification of properties forming the estate and its current status. The administrators should therefore use this information in order for them to invent the deceaseds' properties. The beneficiaries have also given details of who has been collecting income from which properties the administrators should also use this to require the persons concerned who have given figures on income collected by them and applied for the benefit of the estate and themselves to produce supportive documents to have these audited either by the beneficiaries themselves or by the administrators for purposes of accountability at the time of winding up of the estate.

(c) More than six months have elapsed since the current administrators came on board. The law requers that confirmation of grant be applied for soon after the expiry of six months.

(d) This court having disposed off the application for provision for a dependant/dependants which has been the only one of its kind pending on record and since the court has used its discretion to make provision for all the dependants on board, it will be very easy for the administrators to determine the shares of each beneficiaries for purposes of confirmation. The court therefore makes a finding that prayer 3 and 4 are also available to the applicant whom the law allows to move the court and seek reliefs in the

manner done.

For the reasons given in the assessment the court proceeds to make the following final orders in the disposal of the application dated 16th day of February, 2009 and filed on the 2nd day of March, 2009:-

- (1) The grant which had been issued herein to Ruth Wanjiku Wachira and Samson Kabare had been procedurally issued and the same was valid and regular.
- (2) The said grant was confirmed on 7/10/87 and subsequently rectified procedurally for purposes of adding additional properties belonging to the estate of the deceased as and when the same was discovered.
- (3) The mode of distribution indicated in the first confirmed grant of 7/10/87 was that the widow of the deceased Ruth Wanjiku Wachira was to hold the estate property for the benefit of all children of the deceased without any distinction as to gender and or sex.
- (4) The assessment done herein above demonstrate clearly that the subsequent rectifications of the said grant never went to alter the mode of distribution of the estate as solidified by the orders of 7/10/87 meaning that the intention of the confirmation was that both daughters and sons were to benefit from the estate of the deceased a position which was reversed by the orders made on 3/3/98.
- (5) It is common ground that the initial administrators namely Ruth Wanjiku Wachira and Samson Kabare never distributed the estate of the deceased according to law.
- (6) Along the lines, the late Josphine Wangare purported to hold a power of Attorney from the widow Ruth wanjiku Wachira and purported to distribute portions of the deceaseds' estate. As observed herein, the said actions have been declared null and void herein because disposition of a deceased persons estate through a power of Attorney is not provided for by the provisions of the law of sucession Act. And secondly the said purported power of Attorney had not been registered and therefore actions done in its pursuance thereof have all been declared null and void.
- (7) It is common ground that the widow Ruth Wanjiku Wachira suffered a stroke in the year 1996 and was therefore rendered both physically and mentally incapable of administering the estate. This is what led to the filing of the application filed on 11/3/97 which led to the issuance of the orders of 3/3/98.
- (8) It is evident from the record and as demonstrated in the assessment that the orders of 3/3/98 were made in vain because they did not revoke the grant which had initially been issued to Ruth Wanjiku Wachira and Samson Kabare. Secondly they failed to note that the two initial administrators were incapable of executing any documents with aview to distributing the estate. Thirdly the administrators could not therefore be held to be in default in order for the Deputy Registrar of the court to be mandated to execute the transfer documents on their behalf. Fourthly the Deputy Registrar is not recognized as a mandated agent of an estate under the relevant provisons of the law of succession which recognizes only a personal representative. More so in circumstances; where the administrators on board were under adisability like in this case.
- (9) The faulting of the orders made on 3/3/98 ,means that the initial grant remained inforce until revocation on 15/7/2007 in favour of Anne Njeri Knott and Elizabeth Nyambura on the one hand. Secondly it means that any actions done in pursuance to those orders are all null and void and have been declared as such by this court.
- (10) The same position applies to the schedule which had purportedly been refilled on the 25/2/98 which for the reasons given went contrary to the confirmation order made on 7/10/87 and which go to demonstrate that the said schedule was not in existence as at 7/10/87 as it purported to contain provison for properties added after 1987 and was therefore a fogrgery.
- (11) By reason of the provision of section 35(5) of the Act all daughters and sons of the deceased qualify to share equally in the estate of the deceased with the only caveat caveat being that the court has

to respect any gift intervivos made by the deceased or the widow.

By reasons of what has been stated in number 9 and 10 above all the properties of the deceased reverted and are available for provision for a dependant/dependants and the court proceeds to make the following orders with regard to provisions of dependant/dependants.

(A) Shares in various companies.

As enumerated under A above all the shares held in the various companies are to be sold and the proceedings shared out to all the beneficiaries identified herein namely all the daughters and widows of the deceased sons of the deceased.

(B) Proceeds of bank accounts enumerated under (B) above are all to be withdrawn by the current administrators and shared equally amongst all the beneficiaries identified herein as in (a) above.

(C) Provisions for Anne Njeri Knott alone. Anne Njeri Knott is provided for as a dependant from the following properties

1. LR.Loc.14/Kiru/897- 5 acres
2. LR.Loc.14/Kiru/2723.

Winnie Wangui Macharia is to be provided for from the following properties.

1. Loc.14/Kiru/1965/6 as an income generating property- whole
2. Loc.14/Kiru/1751- whole
3. Loc.14/Kiru/2720- whole
4. Loc.14/Kiru/2725- ¼ share
5. Loc.14/Kiru/2732- ¼ share.

Jane Wanjiru Wambugu is to be provided for from the following properties.

1. Loc.14/Kiru/4135- whole
2. Loc.14/Kiru/2725- ¼ share
3. Loc.14/Nyakianga/1024- whole
4. Loc.14/Kiru/2732- ¼ share
5. LR.209/6008- Maringo- whole
6. LR.Loc.14/Kiru/2722- whole
7. LR. Loc.14/Kiru/2721- whole.

Beatrice Wairimu Maina is to be provided for from the following properties.

1. LR. No.14/Kiru/1965/44- whole as an income generating property. The title currently registered in the names of Anne Njeri Knott and Elizabeth Nyambura is ordered to revert back into the names of Beatrice wairimu Maina.

2. LR.209/6045- Mbotela sold by the late Peter Maina whose proceeds is deemed to have been applied by late Peter Maina for his sole benefit and that of his household- whole.
3. Loc.Kiru/2719 being ¼ share of LR. No. Loc.14/Kiru/2732.
4. LR. Loc.14/Kiru/4136 exchanged with Loc.14/Kiru/2552- whole.
5. Loc.14/Kiru 2725- ¼ share.

Winnie Wangui Macharia, Jane Wanjiru Wambugu and Beatrice Wairimu Maina are to be provide for in LR. No. Loc.14/Kiru/1965/54 being the petrol station.

- (a) The income generated on the said Petrol station up to the date of the delivery of this ruling is to be shared equally amongst all the beneficiaries meaning all the daughters of the deceased and the widows of the deceased sons of the deceased.
- (b) The income to be generated from the said property from the date of the delivery of this ruling is to be shared equally amongst the three named widows of the d deceased sons of the deceased.

Estate of Josephine Wangare, Mary Wairimu KAHIA, Dorcas Wanja wachira, Millicent wangui Wachira and Catherine/Elizabeth Nyambura are to be provided for from the following properties.

1. Loc.14/Kiru/4134- whole.
2. Loc.14/Kiru/2725- ¼ shares
3. Loc.14/Kiru/2732- ¼ share

These shares which had been earmarked for Ruth wanjiku Wachira are to be shared equally by the above named daughters to the exclusion of Anne Njeri Knott who has already been provided for.

4. LR. No. 209/6419.

- (a) The income generated from this property upto the date of the ruling and alleged to have been collected by Anne Njeri Knott to be accounted for and shared equally amongst all the daughters of the deceased.
- (b) The residues of the property LR. No.209/6419 is to be shared equally amongst all the daughters of the deceased named above inclusive of Anne Njeri Knott.

5. LR. No.209/2716/209/785/17.

- (a) The income generated from this property upto the date of the ruling is to be shared equally amongst all the daughters and the widows of the deceased sons of the deceased named above.
- (b) The income to be generated on this property after the delivery of the ruling is to be shared equally amongst all the daughters of the deceased named above inclusive of Anne Njeri Knott.
- (c) The property namely Lr. No.209/2716 & 209/7851/17 is to be shared equally by all the daughters of the deceased for the reasons given in the assessment.

12.For the reasons given in the assessment the following properties have been excluded from the properties to be provided for as dependant.

- (1) Shauri Moyo –Nyama land.
- (2) Jericho Lumumba house number AB-35847.

(3) Motor vehicle Reg. No. KPQ-003 Volvo station Wagon.

(4) Motor vehicle Reg. No. KTZ300- Datsun double cabin pickup.

13. For the reasons given in the assessment the current administrators have 60 days from the date of the making of the orders of this ruling to account for all the income collected from the petrol station and Thuru Thuru house for purposes of distribution.

14. Ann Njeri Knott also has to account for the income received from LR.209/6419 within the same period.

15. Income from the properties which have been provided for the sole benefit of Winnie Wangui, Jane Wambugu and Beatrice Wairimu for their exclusive use and their household is not to be accounted for.

16. The current administrators have 60 days from the date of the making of the orders of this ruling to apply for confirmation of the grant alongside the provisions of dependants made herein.

17. For the reasons given in the assessment the following properties have been excluded from the properties to be provided for as dependant.

(5) Shauri Moyo –Nyama land.

(6) Jericho Lumumba house number AB-35847.

(7) Motor vehicle Reg. No. KPQ-003 Volvo station Wagon.

(8) Motor vehicle Reg. No. KTZ300- Datsun double cabin pickup

18. Each party will bear own costs of these proceedings.

19. There will be liberty to apply to either party if need be.

SIGNED AT NAIROBI BY HON. LADY JUSTICE R.N. NAMBUYE

JUDGE OF APPEAL

DATED READ AND DELIVERED AT NAIROBI BY THE HON. MR. JUSTICE MAJANJA ON THIS 14TH DAY OF DECEMBER, 2012.

JUDGE