



**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**SUCCESSION CAUSE NO.281 OF 1995**

**IN THE MATTER OF THE ESTATE SAMUEL MATHAGA WANGO (DECEASED)**

**EDWARD GALI WANGO.....APPLICANT**

**VERSUS**

**MARY NASUBUGA.....1<sup>ST</sup> RESPONDENT**  
**ESTHER NYAMBURA.....2<sup>ND</sup> RESPONDENT**  
**MARY MUTHONI.....3<sup>RD</sup> RESPONDENT**

**RULING**

The chequered and protracted history of this dispute is succinctly captured by the ruling of Koome, J delivered on 30<sup>th</sup> June, 2006. That history may further be summarized as follows: The deceased in this cause, Samuel Mathanga Wango died intestate on 23<sup>rd</sup> May, 1990. He was survived by three widows and fifteen (15) children. The grant of representation was initially issued to his brother, Bedan Wanjohi Wango (Bedan) who died on 17<sup>th</sup> November, 2002 before completing the distribution.

Following his (Bedan's) death, the third widow, Mary Lucy Muthoni was appointed the administratrix and later the other two widows, Teresia Navakosa, the first widow and Mary Nasubuga, the 2<sup>nd</sup> widow, were appointed to jointly administer the estate with Mary Lucy Muthoni. A grant was subsequently issued to the three of them on 8<sup>th</sup> July, 2004.

Mary Lucy Muthoni has been dissatisfied all along, first with Bedan's appointment as administrator and also with the distribution of the assets. To challenge these issues, she brought several applications and filed not less than two notices of appeal to the Court of Appeal, which were never followed through. These numerous applications led Kimaru, J to direct in his ruling of 10<sup>th</sup> November, 2006 that:

**“In the circumstances of this case, apart from dismissing with costs the current application as being incompetent and *res judicata*, I will make a further order that before the applicant files yet another application in furtherance of her scheme to postpone the day of reckoning (by abusing the due process of this court or any other court within the Republic of Kenya), she must seek leave of this court before she can file any application concerning the subject matter of the application herein. It is evident that if the applicant has chosen to disobey the decision of this court then she must of necessity be made to understand in no uncertain terms the consequences of her actions in abusing the due process of this court.”**

Those are indeed strong sentiments perhaps provoked by the frustration at the delayed distribution of the estate, which has been pending since 1999.

As if that warning or ban was not enough, the applicant in the instant application, Edward Gali Wango filed this application on 20<sup>th</sup> November, 2006 seeking that the grant issued to the three widows be stayed and/or suspended and revoked. In this application, although not expressly stated, he has been supported by Mary Lucy Muthoni who has sworn an affidavit in support filed on 12<sup>th</sup> June, 2008, even though she is named as one of the respondent in the application.

The grounds upon which the application is premised may be summarized thus:

- i) that the grant was obtained fraudulently by making false statements and by concealment of material facts
- ii) that the grant was obtained by means of untrue allegations
- iii) that the consents filed were forgeries
- iv) that several beneficiaries were not informed of the filling of the cause
- v) that the applicant had written to the court drawing the court's attention to his intention to objecting to the grant
- vi) that the applicant's mother, the first widow, Teresiah Navakosa never appeared in court or signed or thumb-printed a consent as claimed
- vii) that the consent of the dependants was a forgery
- viii) that some of the assets of the deceased were not disclosed
- ix) that the distribution was unfair, inequitable and oppressive
- x) that the one beneficiary, Esther Nyambura (applicant's sister) and one administratrix have wasted the estate

The application was opposed. Esther Nyambura, Mary Nasubuga and Teresia Navakosa have each filed a replying affidavit, the combine import of which is that the grant was regularly obtained and the distribution was equitable. I reiterate that the grant was issued in 1999 the deceased herein having died in 1990. 21 years later the distribution of the estate has not been completed because of the numerous applications by one administratrix and now the applicant and, of course also following the death of Bedan.

There is no doubt that in 1997 after a temporary grant had been issued to Bedan, the applicant, who was studying at the time in the United States of America addressed a letter to the then Resident Judge, Ondeyo, J asking that the distribution of the estate be suspended until the applicant and his brothers who were overseas returned to the country and personally appeared in court. The Executive Officer of the court, on instructions of the Judge acknowledged receipt. Further on 11<sup>th</sup> February, 1997, the Judge herself recorded that:

**“COURT:**

**A letter dated 31<sup>st</sup> January, 1997 from the deceased's eldest son, one Eddie K. Wango, studying in the United States has been received. He is opposed to this matter proceeding in his absence. If the petitioners apply for confirmation, this letter shall be brought to their attention.”**

Subsequently, on 11<sup>th</sup> November, 1999, two years later, the grant was confirmed and a certificate of

confirmation issued. In the certificate, the distribution was done to the three houses. Accompanying the application for confirmation were:

- i) Minutes of the family meeting dated 6<sup>th</sup> July, 1999 where the distribution was agreed upon and the three widows signed
- ii) Written consents from the three sons – Eddie K. Wango, the applicant from Everett, U.S.A. dated 10<sup>th</sup> May, 1999, Moses M. Wango and David Wanjohi Wango, also sons of the deceased both from Hatfield and dated the same day 14<sup>th</sup> June, 1999.

It is the applicant's contention, among others, that his letter to the Resident Judge was not brought to the attention of the court when the grant was confirmed. Two issues need to be pointed out.

First and foremost, it was not enough for the applicant to merely write a letter to the court to halt indefinitely the confirmation of the grant. In terms of **Section 68** of the **Law of Succession Act** and **Rule 15** of the **P & A Rules**, he ought to have filed either an objection or a caveat in the prescribed form

Secondly, there was a letter before the court purporting to have been written by the applicant giving, as it were, green light to the confirmation of the grant. Although the applicant contends that the letter was a forgery, he has not shown that indeed that is so. As a matter of fact, I feel persuaded that he issued it. How else can the lull of nine (9) years from the time the applicant wrote to the Resident Judge and when the present application was filed be explained? He gave his consent but much later has changed his mind.

Of the three widows and fifteen children of the deceased persons, it is only Mary Lucy Muthoni and the applicant who have been aggrieved by the process of obtaining the grant and distribution of the estate.. They have alleged that the applicant's mother, Teresiah Navakosa's thumb print in the proceedings has been forged and that an imposter impersonated her in court. Teresiah Navakosa has herself sworn an affidavit dismissing those allegations and confirming that she indeed was involved, thumb printed and consented to the making of the grant and distribution of the estate.

The applicant's further contention that several dependants were not informed of the cause has no merit without particulars of those dependants.

Regarding the deceased's assets which were not disclosed, similarly without the details of such assets, such a claim remains a rumor. The applicant and Mary Lucy Muthoni talked of several properties belonging to the deceased in Uganda yet failed to provide the particulars, such as where they are located, the parcel numbers or even documents of title.

Finally, it is alleged that the distribution was not equitable. Once more, the applicant has not demonstrated how the distribution was not equitable. He also has not suggested how the distribution ought to have been done. The applications brought previously by Mary Lucy Muthoni raised more or less similar issues as those raised in the present application. The court, Rimita, Koome and Kimaru, JJ have consistently ruled that the issue of distribution and by implication, the process of obtaining the grant had been decided with finality and it amounts to *res judicata* or abuse of the court process to keep raising those issues in subsequent applications.

For my part, distribution must be completed and completed at once as enough time has been wasted in unhelpful and costly litigation for over fifteen (15) years.

This application is dismissed with costs to the respondents/administratrixes and it is further ordered that orders of stay issued earlier be and are hereby discharged.

**Dated, Delivered and Signed at Nakuru this 4<sup>th</sup> day of February, 2011.**

**W. OUKO**  
**JUDGE**