

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 135 OF 2002

**IN THE MATTER OF THE ESTATE OF SAMWEL
MWANGI.....DECEASED**

AND

LUCY WANJIKU

MWANGI.....APPLICANT

Versus

ANN KABURA

MWANGI.....RESPONDENT

RULING

Lucy Wanjiku Mwangi the applicant herein took out the summons dated 20th November 2010 in which she beseeched this court to set aside the orders given on 27th October 2010 by way of review. The summons is supported by the affidavit of the Applicant. Ann Kabura Mwangi, the Respondent herein, opposed the summons by filing grounds of opposition and a replying affidavit she swore on 20th November 2010.

I have considered the oral submissions made by learned counsels from both sides. I have also taken into account the material placed before this court. The applicant avers that there is an error apparent on record in that the orders given on 20th November 2011 offends the provisions of section 40(1) of the Law of Succession Act. It is said that the estate is in a debt of Kshs. 251,758/=. It is also stated that some of the properties listed as the assets of the estate do not belong to the deceased and other have been misdescribed. It is also alleged that other have been left out.

The Respondent urged this court to reject the application on the basis that it has no merit. She alluded that the rent the applicant has been collecting from premises standing on L.R. Murang'a/Municipality/Block 11/324 was sufficient to settle any outstanding rates due to the municipality. The Respondent admitted that she discovered after the confirmation of grant that the deceased had sold some of the properties. The Respondent stated that the Applicant should have applied for the grant to be rectified instead of making an application for review.

After a careful consideration of the rival submissions, it has now emerged that the Respondent admits that she made mistakes by causing the grant to be confirmed before satisfying herself that the properties listed as the assets of the estate were still the deceased's property. She has indirectly also admitted that the debts

due from the estate have not been ascertained. The Respondent is of the view that the Applicant should have applied for the rectification of the grant instead of applying for review. I have anxiously considered the matter and I find the application to raise serious questions of law. The Applicant has stated that the distribution of the estate does not conform with the provisions of section 40(1) of the Law of Succession Act. This appears to be true. The applicant has asked for an order for review but has not proposed the mode of distribution. I think that is the best order which should be given in the circumstances of this case is that of setting aside. What it means is that the order confirming the grant is set aside. The summons for confirmation of grant dated 19th May 2005 is ordered struck out. A fresh application for confirmation of grant to be filed jointly or separately by the administratrixes. Costs of the application shall be in the cause.

Dated and delivered this 29th day of July 2011.

J.K. SERGON

JUDGE

In open court in the presence of Miss Keli holding brief Magee for Respondent. No appearance for the Applicant.