



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 324 OF 2009

IN THE MATTER OF THE ESTATE OF JOSEPH TITUS WANDUKA - DECEASED

**MERCY WAMBUI KAGO.....OBJECTOR/
APPLICANT**

Versus

GRACE WANGECHI GATHUMBI

**JANE WAMBUI.....ADMINISTRATORS/
RESPONDENTS**

RULING

The subject matter of this Ruling is the summons dated 24th March 2011 in which Mercy Wambui Kago, the objector herein seeks for the following orders:-

- 1. That pending the hearing and determination of the Summons of Revocation of Grant or pending further orders of this court, JANE WAMBUI GATHUMBI the 2nd Respondent herein be prohibited from in any way interfering with any dues belonging to or any part of the estate of the deceased in particular any funds held by the Public Trustee, the Directorate of Pension, the NSSF and the Harambee Co-operative Savings and Credit Society.***
- 2. That the Public Trustee (Nyeri) be directed to pay the Applicant MERCY WAMBUI KAGO Kshs. 30,400 to enable he pay school fees for the deceased children namely SUSAN WANJIRU WANDUKA and ADAMSON WACHIRA WANDUKA.***
- 3. THAT pending the hearing and determination of the Summons for revocation of Grant the Public Trustee Nyeri be directed to pay the Applicant MERCY WAMBUI KAGO Kshs. 30,000 every month for the upkeep and maintenance of the deceased's children SUSAN WANJIRU WANDUKA and ADAMSON WACHIRA WANDUKA.***
- 4. The costs of this application be provided for.***

The objector swore an affidavit in support of the summons Grace Wangechi Gathumbi and Jane Wambui,

the administratixes filed the replying affidavit of Jane Wambui and grounds of opposition to oppose the summons.

The objector has deponed that she is a widow of the late Joseph Titus Wanduka who dies on 29th July 2006. She claimed their marriage was blessed with two children namely: Adamson Wachira and Susan Wanjiru. She averred that her co-wife Grace Wangechi Gathumbi and her Sister Jane Wambui Gathumbi, the administratixes herein, obtained letters of administration intestate in respect of the deceased's estate without involving her. She claimed that the grant was obtained in Muranga yet the deceased resided in Kerugoya. It is her submissions that the Muranga Court had no pecuniary jurisdiction to deal with the succession cause. She accused the administratixes of failing to disclose to court that she was one of the deceased's widows hence a lawful beneficiary together with her children. The applicant further annexed that upon the death of the deceased she was kicked out of her matrimonial home by the deceased's relatives. It also alleged that Grace Wangechi Gathumbi, caused L.R. No. MWERU/KAGIO/297 into two subdivisions i.e LR. No. MWERU/KAGIO/ 3383 and 3384. Those subdivisions were transferred to Millicent Wanjiru Mutugi and Paul Gathura Gachau. It is said that Grace Wangechi Gathumbi passed away on 8/12/2009. The applicant claimed that she has become completely unable to meet basic need for the family. She also pointed out that the Children's school fees have not been paid. She urged this court to issue an order to direct the public trustee to settle the fees out of the money they hold. The public Trustee is alleged to be holding a sum of Kshs. 1.5 million being the deceased's employment benefits. The applicant claimed that she is aware that Jane Wambui has been making a follow up to be paid the money by the Public Trustee yet she is not entitled to inherit the deceased's estate. For this reason the applicant applied for a Prohibitory order to prohibit the Jane Wambui from accessing those funds from the Public Trustee.

Jane Wambui resisted the application. She has alleged that the applicant is not a widow nor a dependant of the deceased. It is also stated that the application lacks any foundation in law since the applicant has not filed any application to have the grant revoked.

I have considered the rival submissions made by both sides. Basically the applicant seeks two main orders: First an order directing the Public Trustees to pay Kshs. 30,400 being the school fees of the deceased's children and another sum of Kshs.30,000 being her maintenance. Secondly, an order of prohibition to prohibit Jane Wambui from intermeddling with the deceased's estate particularly the funds held by the Public Trustee pending the hearing and determination of the summons for revocation of grant. There is no doubt that the Applicant's summons for revocation of grant dated 7th April 2009 was dismissed on 12th May 2009. I have looked at the record and there is a pending Notice of Motion dated 10/9/2009 which seeks to have the dismissed order reviewed and set aside. That application has never been prosecuted. As we speak, there is no pending application for revocation of grant. With respect, I agree with the averments of Jane Wambui that the applicant's summons lacks the necessary foundation to stand. The summons seeks for interim orders pending the hearing and the determination of an alleged summons for revocation of grant. This ground alone disposes of the summons. The same is hereby ordered struck out and dismissed for lacking in merit with costs to the surviving respondent.

Dated and delivered this 8th day of July 2011.

J. K. SERGON

JUDGE

In open court in the absence of parties.

J. K. SERGON

JUDGE