



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI**

Succession Cause 490 of 2009

**IN THE MATTER OF THE ESTATE OF REBECCA MUTHONI WAHOME – DECEASED
WACHIURI WAHOME.....1ST PLAINTIFF/APPLICANT
JACKSON KING'ORI WAHOME.....2ND PLAINTIFF/APPLICANT**

VERSUS

**ALICE WANJIRA NJOROGE.....1ST DEFENDANT/RESPONDENT
PATRICK MBOGO WAHOME.....2ND DEFENDANT/RESPONDENT**

RULING

WACHIRUI WAHOME, hereinafter referred to as the 'applicant' took out the Summons dated 23rd April 2010 in which he prayed for the following orders:

1. *“That the defendant/respondents are guilty of the offence of willfully and recklessly neglecting to get in some of the assets forming part of the estate of Rebecca Muthoni Wahome.*
2. *That the defendants/respondents are guilty of the offence of willfully or recklessly producing in court a false inventory of assets that form part of the said estate.*
3. *That order be granted to the applicants/plaintiffs to dispose of all free properties of the deceased to stop further intermeddling.*
4. *That co-administrator Patrick Mbogo be restrained from obstructing the plaintiffs/applicants from executing their lawful duties as co-administrators of the said estate.”*

The Summons is supported by the affidavit of Wachiuri Wahome sworn on 23rd April 2010. **PATRICK MBOGO**, hereinafter referred to as the 'Respondent' swore a replying affidavit which he filed to oppose the application. When the Summons came up for interpartes hearing, the parties involved in this dispute agreed to file written submissions to dispose of the application.

The Applicant was the only party who filed written submissions whereas the Respondent heavily relied on his affidavit. The Applicant is of the view that the Respondent willfully neglected to include certain assets as part of the Estate of Rebecca Muthoni Wahome, deceased, when applying for the confirmation of grant on 23rd October 2009. It is also alleged that the Respondent has taken up possession thereof and is intermeddling with the Estate. The Applicant

has further alleged that the Respondent has obstructed the Applicant from performing his duties as a co-administrator of the Estate of Rebecca Muthoni Wahome, deceased. The Respondent on his part denied ever intermeddling with the deceased's Estate. He also denied having withheld any information regarding the assets forming part of the Estate of Rebecca Muthoni Wahome, deceased.

I have carefully considered the averments contained in the affidavits filed by both sides. I have also considered the written submissions filed by the Applicant. It is apparent that the Respondent in his affidavit in support of the Summons for confirmation of grant has included the main house which the late Rebecca Muthoni Wahome resided on during her life time. That house is part of the 2.5 acres to be excised from **L.R.NO. KIRIMUKUYU/KARIA/17**. It has also come out clearly that the application for confirmation of grant is based on an agreement reached by the beneficiaries of which the Applicant was part of. In the end I am convinced that the Respondent did not intermeddle with the deceased's Estate. The issues raised in the Summons dated 23rd April 2010, could as well be determined within the application for confirmation of grant and by

protest. In the end I am convinced the Summons dated 23rd April 2010, has no merit. The same is ordered dismissed. Since the dispute involved members of the same family, I direct that each party meets his or her own costs.

Dated and delivered at Nyeri this 7th day of October 2010.

J. K. SERGON
JUDGE

In open court in the presence of Mr. Kimunya holding brief Muchiri for the Petitioner and the Objectors in person.