



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Succession Cause 47 of 2001**

***IN THE MATTER OF THE ESTATE OF MARY WAITHIRA NJOROGE – DECEASED***

**RULING**

After the Probate of a written Will was granted to the named executor, the objector filed summons for revocation or annulment of grant dated 12<sup>th</sup> June, 2001.

What is the bone of contention is the validity of the written Will. It is claimed by the Objector, who is admittedly a son and also alleged to be a beneficiary under the will, that the will was not in accordance of the law and that the deceased had no capacity, at the time the said will was allegedly executed, to make a will or understand what she was executing.

It is not disputed that the Objector is a son of the deceased and the executor is a grandson of the deceased, being son of the deceased's daughter. The will mentions all the three persons as beneficiaries in the property known as Kiambaa/Kanunga/59. It is mentioned that David Mwangi described as the son to get ½ acre. The remaining 0.4 acre is given to the executor.

The executor denied the allegation and urged the court to validate the will. According to him, the Objector is mentioned as a son.

Section 76 of the Law of Succession Act (Cap 160) stipulates ground under which a grant be revoked or annulled and the burden to prove those grounds is upon the objector.

In support of the claim of invalidity of the will, the objector who is named as Stephen Mwangi Njoroge, testified that his name is not David Mwangi and he did not know any one named David Mwangi being his brother.

Thus, according to him, the allegation that he is a beneficiary under the will is not correct.

Moreover, he has testified that the deceased was sick for last 10 years suffering from Thyroid and was also mentally sick walking aimlessly. He stated that the land originally belonged to his father and the deceased inherited the same by consent of the beneficiaries.

It is also true that a succession cause was filed at Senior Principal Magistrate's Court at Kiambu being P & A No.271/99 which was stayed so as to permit the objector (the executor herein) to file the present cause and thus the matter is before this court.

The objector called a witness who is a son to a step brother of the objector's father (husband of the deceased).

He reiterated that the deceased used to go out and would not find her way back. He first stated that David Mwangi was staying on the land. But he corrected and stated, as under:

“I say that on the land now I say Stephen Mwangi used to stay with her. He still stays there. His sister occasionally comes to cut Napier grass.”

The objector in his evidence did not testify that he was staying with the deceased on the land. His witness by mentioning just the name of David Mwangi and then correcting himself by saying “I now say Stephen Mwangi”. has raised a doubt as to the identity of David Mwangi who is a beneficiary under the will as a son of the deceased. On the other hand the executor (who was absent on the hearing of the cause) has confirmed that the objector is a beneficiary. He is also mentioned as a beneficiary in the Petition filed before the subordinate court at Kiambu. The name David Mwangi does not appear in that petition.

Doing the best I could under the above mentioned circumstances, I do find that the deceased left two children. The objector herein and Margaret Wambui being the daughter. The executor herein is the son of the said daughter. The evidence of the deceased’s incapacity although not adequately placed before this court is not controverted. I am also perturbed by the insertion of the names ‘David Mwangi’ as a son to the deceased in her will, when his name is no where mentioned either by the parties or in the letters of the chief. The executor is definitely mentioned as a grandson, who shall in any event inherit from the share of his mother.

I thus direct that the written Will be revoked and a joint grant in the names of the objector and the executor be issued forthwith.

Either of them shall file a summons for confirmation with the proposal of equal distribution between the objector and Margaret Wambui within 7 days from the issuance of the grant.

There shall be no order on costs.

Dated and signed at Nairobi this 11<sup>th</sup> day of November, 2008.

**K.H. RAWAL**

**JUDGE**

**11.11.08**