

REPUBLIC OF KENYA

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

Succession Cause 917 of 2008

NANCY WAROMO NG'ANG'A APPLICANT/RESPONDENT

versus

AGNES MUTHONI NG'ANG'A1ST RESPONDENT /APPLICANT

ALAN RUBIA NG'ANG'A2nd RESPONDENT /APPLICANT

SAMMY MWIRIGI NG'ANG'ARD RESPONDENT /APPLICANT

RULING

This matter resolves around the estate of the late **HUMPHREY RUBIA NG'ANG'A** ('the deceased'), which comprises of several residential properties.

NANCY WAROMO NG'ANG'A, a widow of the deceased has moved this court in an application in which seeks several orders, to restrain her three step children, namely **AGNES MUTHONI NG'ANG'A**, **ALAN RUBIA NG'ANG'A** and **SAMMY MWIRIGI NG'ANG'A**, the three, or their agents from taking possession, disposing of or otherwise intermeddling with the properties which form her late husband's estate pending the grant of the letters of administration of the said estate, and also an order to compel the three to quit or vacate one of the estate properties namely L.R. No. 209/6898 Kileleshwa Nairobi, and in default an eviction order to issue.

She bases her application on several grounds but mainly that though her husband died on 19/9/2003, and though it had been agreed with her three step children that she and Allan Ng'an'ga would petition for the letters of administration of the estate, it has nevertheless become impossible to do so as these three had refused to comply and had forcibly taken over the possession of one of the properties without orderly management of the estate, and further, that the three and especially Allan have continued to intermeddle with the estate.

AGNES MUTHONI NG'ANG'A, **ALAN RUBIA NG'ANG'A** and **SAMMY MWIRIGI NG'ANG'A**, have on their part moved this court seeking orders to revoke and/or nullify the Limited Grant ad Litem, which their stepmother obtained from this court on 5/5/2008.

Each party opposes the other's application, with the three alleging inter alia that Nancy did not provide a full list all the assets of the estate; however the three having filed what they consider to be a list of the extra assets, which Nancy concedes to.

I have considered the pleadings herein as well as the submissions of both able counsel and it now seems clear that the main the grievance of three who concede having taken possession of the property in Kileleshwa, is that their step mother included amongst the beneficiaries one James Kaberere, whom the three feel should not benefit from the estate as they allege that he was not only born out of wedlock, but that he was already an adult by the time Nancy married their father. The three however concede and rightly so, that the issue of dependency cannot be determined in a summary manner, or in other words in an application such as the one before me. It is my humble opinion that given the above circumstances, the application to revoke/nullify the limited grant which was issued to Nancy is devoid of merit and I dismiss it accordingly.

I do on the other hand find that there would be need to allow Nancy's application in terms of prayers 4 and 5. in furtherance thereto and having taken note of the lists which the both parties have submitted, which gives an indication of the full inventory of the assets of the estate, and being duly empowered, and in the interests of justice, I also do order that the estate be preserved, with powers to Nancy Waromo Ng'ang'a to collect all the rents that are due to the estate as well as all other incomings and there-from to pay all outstanding statutory dues. She shall not only be accountable but shall also be responsible for the preservation of the whole estate until further orders of this court.

The three respondents shall meet the costs of these applications.

Dated and delivered at Nairobi this 11th day of November 2008.

JEANNE GACHECHE

Judge

Delivered in the presence of: