



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

Misc Appli 116 Of 2003

JOHN KARANJA KARIUKI 1ST APPLICANT

PETER HIKA KARIUKI 2ND APPLICANT

VERSUS

MARY WANGU 1ST RESPONDENT

KARANJA KARIUKI 2ND RESPONDENT

RULING

This is an application brought under **section 76 of the Law of Succession Act and rules 44(1) and (2) and 73 of the Probate and Administration Rules**. The applicants sought to have the grant of letters of administration intestate made to Mary Wangu and Karanja Kariuki and which were confirmed on 30th April, 2002 in Nyahururu PMCC Succession cause number 96 of 1997 revoked on the grounds that the proceedings to obtain the grant were defective in substance and that the grant was obtained fraudulently by the making of a false statement or by concealment of something material to the cause.

The application was made on the grounds that:

- (i) the applicants and other beneficiaries of the deceased's estate were not notified of the application for confirmation of the grant.***
- (ii) the identities and shares of all persons beneficially entitled to the estate were not determined before the confirmation of the grant.***
- (iii) Apart from the respondents, all the other beneficiaries of the deceased's estate were not provided for although they were of majority age.***

The application was supported by an affidavit sworn by the first applicant. In the said affidavit, the deponent amplified the aforesaid grounds. Mr. Chege for the applicants further submitted that the Principal Magistrate's court at Nyahururu where **succession cause No. 96 of 1997** was filed and the said grant issued and confirmed had no jurisdiction to deal with the matter because one of the assets of the estate of the late Kariuki Gathenge, NYANDARUA/KAHURU/205 measured 18 hectares or thereabouts and was valued at over Kshs.1,000,000/- whereas the pecuniary jurisdiction of the subordinate courts for purposes of probate and succession causes was Kshs.100,000/-.

Although the respondents' advocates M/S Kinyanjui Njau were served with a hearing notice on 27.6.2005 advising them that the hearing of the said application was to take place on 3rd November, 2005 they did

not attend court and so the said application proceeded in their absence. That notwithstanding, I considered a replying affidavit filed by the second respondent in reply to the applicants' affidavit in support of their application.

The issue that concerned me most was the one of jurisdiction of the Principal Magistrate's court at Nyahururu. As per the **provisions of rule 7(3) of the Probate and Administration Rules**, such court could only have had jurisdiction if the gross value of the deceased's estate did not exceed Kshs.100,000/-. In all other instances, petition for letters of administration should be filed in the principal registry or a High Court district registry.

In the petition that was filed by the applicants at Nyahururu Principal Magistrate's court, the deceased's assets were listed as a parcel of land known as Nyandarua/Kahuru/205, money in account number 118-01-6985 at Kenya Commercial Bank, Nyahururu branch and a tea kiosk at Engineer and the value of those assets was given as Kshs.100,000/-/ I believe this was an unjustifiable figure which was quoted by the respondents merely to hoodwink the said court into accepting to deal with the matter. **Section 51 of the law of succession act** requires that a full inventory of the assets and liabilities of the deceased be stated. That includes an estimate of the value of each asset and liability, **see rule 7(1)(d) of the Probate and Administration Rules**. If the said parcel of land measures about 18 hectares as stated by the applicants' counsel then the subordinate court had no jurisdiction to deal with the matter. That alone is sufficient to warrant a revocation of the letters of administration that were issued to the respondents. I may also add that I have noted several procedural mistakes that were committed in the application of the said grant and confirmation of the same for example, the second respondent was joined as a co-administrator of the estate in the absence of any cross petition by himself. Also, the second respondent had filed a notice of objection to the issue of the said grant under **rule 17** and yet the court did not serve him with any notice requiring him to file answer to the petition. When it came to confirmation of the grant, consent of all the beneficiaries was not sought. These are just but a few of the shortcomings which I have pointed out.

For these reasons, I allow the applicants' application dated 13th march, 2003 and award to them the costs of the application.

DATED AT NAKURU THIS 31st DAY OF March, 2006

D. MUSINGA

JUDGE

31/3/2006

Ruling delivered in open court in the presence of Mr. Gathaia holding brief for Mr. Chege for the applicants and N/A for the respondent.

D. MUSINGA

JUDGE

31/3/2006