



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

**Prob & Admin 80A of 1999**

**IN THE MATTER OF THE ESTATE OF WARURU WANJOGU (DECEASED)**

**JOSEPH KURIA WARURU .....**

**OBJECTOR**

**VERSUS**

**JOHN NJOGU WARURU .....**

**PETITIONER**

**AND**

**WILLY KIPKURUI CHERUIYOT .....INTERESTED  
PARTY/APPLICANT**

**R U L I N G**

The Grant of the Letters of Administration of the Estate of WARURU WANJOGU was confirmed in favour of JOHN NJOGU WARURU by this court on 21/9/2000.

The aforementioned John Njogu Waruru appeared before me on 7/2/2005 as the petitioner, in person, and recorded a consent order with Ngigi Mbugua advocate for the objector to the effect that “*the Grant issued and confirmed on 21/9/2000 be and is hereby revoked and in its place, there do issue a Grant in the names of:*

- (1) *John Njogu Waruru,*
- (2) *Joseph Kuria Waruru,*
- (3) *Livingstone Waruru and*
- (4) *Mary Wambui Ndafa.*

*That the 4 shall hold the same Grant in their own behalf and on behalf of all the other beneficiaries to the Estate, who shall also include Jane Wataku Macharia and Ruth Muthoni Mwaura. The others will be as appear on P&A.5 of 21/4/1999.*

*Either party may be free to apply”.*

The two signed the order.

Mr. Limo who represents John Njogu Waruru (hereinafter referred to as 'the petitioner'), has now moved the court and he seeks an order to review and set aside the aforementioned consent order on the grounds inter alia that though he was on record for the petitioner, he was not served with the application which led to it and that in the circumstances, the consent, which stands to prejudice his client was improperly entered for want of representation.

The application is however opposed mainly on the ground that the contentious order was by consent.

I have taken the submissions of both counsel into account and as expected, I have heard to peruse the record with a view to establishing whether counsel was on record as alleged and secondly whether the applicant deserves the orders which he seeks.

A perusal of the record reveals that the petitioner appointed Mr. Limo to act on his behalf in this matter on 19/3/2003, an offer which Mr. Limo duly accepted. It being the position, it can not be gainsaid that once an advocate comes on record for a litigant, all communication must be directed to and never to the client, and that being the case, at no time should such a litigant be expected to represent himself. Mr. Ngigi who ignored the fact Mr. Limo was on record, proceeded to flout all rules of procedure when he proceeded to serve the petitioner with the application, and he also failed to disclose to the court, that the petitioner had already appointed an advocate. The applicant has a right to claim that he was misled into recording the said consent, for the simple reason that though he deserved representation, his adversary denied him that right by sidelining his advocate.

It is the duty of an advocate who is also an officer of the court to disclose all the information including details of representation of all parties to the suit, with a view to assisting the court reach the right verdict.

I am convinced that the said consent order was irregular for want of representation and I do hereby grant the applicant the orders which he seeks. He shall also have the costs of this application.

Dated and delivered in Eldoret this 7<sup>th</sup> day of July 2006.

JEANNE GACHECHE

JUDGE

Delivered in the presence of:

Mr. Mbugua for the objector/respondent

No appearance for the petitioner/applicant