



**REPUBLIC OF KENYA**

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

**Succession Cause 281 of 1995**

**IN THE MATTER OF THE ESTATE OF THE LATE SAMUEL MATHAGA WANGO –  
DECEASED**

**MARY MUTHONI.....APPLICANT**

**VERSUS**

**MARY NASUBUGA.....1<sup>ST</sup> RESPONDENT**

**ESTHER NYAMBURA.....2<sup>ND</sup> RESPONDENT**

**RULING**

The deceased, Samuel Mathaga Wango died on the 23<sup>rd</sup> of May, 1990. On 8<sup>th</sup> of June, 1995, Bedan Wanjohi Wango (*hereinafter referred to as the petitioner*), a brother to the deceased applied to be granted letters of administration to the deceased's estate. In the said application for the grant of letters of administration intestate, the petitioner listed the beneficiaries of the deceased's estate and the properties that comprised the deceased's estate. Of interest to the current application is that the petitioner stated that the deceased had been married to three wives who bore him several children who are listed in the petition. The petitioner was granted the letters of administration and on the 12<sup>th</sup> of July 1999, the petitioner applied for the said letters of administration to be confirmed. The proposal by the petitioner on how the estate of the deceased was to be distributed was approved by the court. It is apparent from the said subdivision scheme that the properties of the deceased were distributed to the families that comprised the three houses of the deceased, more or less equally. A consent to distribute the deceased's estate dated the 6<sup>th</sup> of July 1999 was filed in court. In the said consent, the three widows of the deceased agreed on the mode of the distribution of the deceased's estate. Each widow signed the said consent.

After the said mode of distribution was adopted by the court it was given effect to, and each widow given a share of the estate of the deceased as was agreed by consent, it is apparent that Mary Muthoni (*hereinafter referred to as the applicant*) was aggrieved by the said subdivision scheme. She made an application to court to have the said confirmation of grant set aside. The application was heard by Rimita J, who on the 13<sup>th</sup> of July 2000 ruled that the applicant's complaint had no basis in law. He dismissed the application to have the confirmation of grant revoked. The applicant was aggrieved by the said decision and filed a notice of her intention to appeal to the Court of Appeal. She sought orders from Rimita J, staying the giving effect to his said decision. The application for stay was granted pending the hearing and determination of the appeal which the applicant had indicated that she intended to file to the Court of Appeal. To-date the applicant has not file the appeal to the Court of Appeal.

Instead the applicant has filed several applications through various firms of advocates in the High Court with a view of frustrating the giving effect to the distribution scheme which was agreed upon by the three widows and all the children of the deceased. Having carefully read through the proceedings in this succession cause, it is clear that the applicant is engaged in legal maneuvers whose effect is to frustrate the respondent in this application from taking over the portion of the deceased's property that she had inherited. I find the applications filed by the applicant in this court to be in utter abuse of the due process of the court. The applicant cannot file multifarious applications before the High Court whose effect is to prevent the distribution of the deceased's estate. The current application is yet another application of similar nature of frustrating the respondent from taking possession of what is legitimately due to her.

The matter in dispute in this application has been heard and determined by a court of competent jurisdiction. I agree with the respondent that the matters raised in this application are *res judicata*. The applicant had indicated that she would appeal to the Court of Appeal against the decision of Rimita J, which refused her application to re-open the distribution of the deceased's estate. Since then much water has passed under the bridge. It is trite law that litigation must come to an end at some point. In the case of the applicant, this court is advising her that she has reached the end of the road, particularly in the High Court. She must accept the decision of this court which was earlier rendered and which approved the distribution of the deceased's estate. She cannot postpone indefinitely the day when she is due to surrender the portion of the property that was inherited by the respondent. It is the view of this court the time for the applicant to surrender possession of the said property belonging to the respondent is now. Her dalliance with the courts must come to an end.

In the circumstances of this case, apart from dismissing with costs the current application as being incompetent and *res judicata*, I will make a further order that before the applicant files yet another application in furtherance of her scheme to postpone the day of reckoning, (*by abusing the due process of this court or any other court within the Republic of Kenya*) she must seek leave of this court before she can file any application concerning the subject matter of the application herein. It is evident that if the applicant has chosen to disobey the decision of this court then she must of necessity be made to understand in no uncertain terms the consequences of her actions in abusing the due process of this court.

**DATED at NAKURU this 10<sup>th</sup> day of November, 2006.**

**L. KIMARU**

**JUDGE**