



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**SUCCESSION CAUSE NO. 1618 OF 1996**

**IN THE MATTER OF THE ESTATE OF MUTHONI WAWERU ALSO KNOWN AS RAHAB  
MUTHONI WAWERU (DECEASED)**

**JUDGMENT**

Janet Wanjiku Waweru filed the Summons for revocation or annulment of the grant of Letters of Administration issued to Teresia Njeri Kimani on 16th October 1998 in respect of the estate of the late Rahab Muthoni Waweru the deceased who died on 9th June 1992.

The late Rahab Muthoni Waweru, was one of the three wives of Waweru and she had no issues of her own. Accordingly when she died she was buried by the co-wife Janet Wanjiku Waweru and her four children and the respondent, Teresia Njeri Kimani together with her three siblings.

The respondent, Teresia Njeri Kimani petitioned for Letters of Administration on 25th July 1996. The petitioner's sisters namely,

Lucia Nduta Waweru

Margaret Wambui and

Anastasia Wanjeri Nganga

duly consented to the respondent applying for the Letters of Administration. Citations to accept or refuse Letters of Administration intestate were issued to:

Wanjiru Waweru

Jane Njeri

Mary Nyawira

Gichuru Waweru

Wambui Waweru

According to an Affidavit of Service sworn on 28th August 1996 by Joseph Mtesa Mungai, the citations were duly served upon all the above citees. There was no objection that was filed and the grant of Letter of Administration intestate was duly issued on 15th April 1997 to Teresia Njeri Kimani and confirmed on 16th October 1998 on the basis that the parties had agreed pursuant to a consent letter dated 16th October

1992 that the deceased two properties be registered as follows:

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be registered jointly in the names of

- a) Teresia Njeri Kimani (on behalf of 2nd house).
- b) Wanjiru Waweru (on behalf of 3rd house)

On 2nd September Janet Wanjiku Waweru filed the present application seeking for the revocation of the grant on the grounds that

- 1) The proceedings to get the grant of Letters of Administration were defective in substance
- 2) The grant was obtained fraudulently by making of a false statement and by concealment from the court of something material to the case.
- 3) The grant was obtained by means of untrue allegations of fact essential in point of law to justify the grant.

This application was supported by the applicant's affidavit sworn on 2nd September 2003 and a further supplementary affidavit sworn on 29th April 2004. In the course of the hearing, the parties agreed that the Letter of Consent dated 16th October 1998 be submitted to the Divisional Criminal Investigation Office at the Central Police Station for expert examination on whether the signature on the document belongs to the applicant.

A report was filed in court on 19th November 2003 by Joseph L. Chogo for the Principal Criminal Registrar. The report confirms that

“The print appearing on exhibit marked ‘A’ and the names of Wanjiru Waweru is identical to the right thumbprint recorded on exhibit marked ‘C’ in the names of Janet Wanjiku Waweru.”

The applicant was not satisfied with this finding and she caused the same document to be subjected to a further examination by M/s Hawkeye Technologies. According to their report marked as JWW ‘4’ the thumbprint exhibit marked

“A” does not show minimum required number of ridge characteristics to establish identity beyond reasonable doubt”

Hence counsel for the applicant invited the court to find that the signature by way of thumbprint was a forgery.

In addition, there are other beneficiaries who did not sign a consent. It is not clear whether the respondent sisters agreed to the mode of distribution whereby the deceased estate was registered in the name of the respondent without indicating that she is holding the same in trust of her sister. Moreover the name of the applicant was not Wanjiru Waweru, her full name is Janet Wanjiku Waweru, due to these irregularities the court was asked to revoke the grant.

On the other hand the application was strenuously opposed by the respondent. She relied on her replying affidavit sworn on 1st October 2003. According to the respondent, she set out all the particulars of the deceased and cited the applicants Wanjiru Waweru being the name she has always known the applicant by, hence the respondent submitted that the applicant had a duty of exhibiting an identity card to verify

her correct names. The respondent claimed to have acted in good faith and to have distributed the deceased estate in the best interests of all the survivors of the deceased. Counsel for the respondent asked the court to disregard the applicants application.

I have carefully considered all the material that was placed before me. It is clear from the records that when the petition was filed, citations were served on all the survivors of the deceased who ranked in priority with the respondent. If the applicant was disputing service, it was upon them to summon the process server who filed an affidavit of service to cross-examine him on the veracity of his affidavit of service. In the absence of this, I find the argument of lack of service untenable.

I have considered both the reports by the Kenya police and the Hawkeye. M/s Hawkeye seemed to have relied on a photocopy of the original consent letter to arrive at their finding, which the Kenya police obtained the original consent letter.

In view of the above, I am inclined to be persuaded by the report of the Kenya Police as opposed to that of the Hawkeye. Having come to that conclusion that the applicant signed the consent, upon which the grant was confirmed, in my humble view this was the applicant's fundamental complaint. The property was shared between the two houses, and the other beneficiaries who are said to have failed to give their consents have not filed any affidavit to support the applicant.

If the applicant was dissatisfied with the way the title was registered the remedy lies in her filing an application to rectify the grant to reflect her correct names and distribution. Finally the allegation that the deceased left a will is also for tetanus as the deceased died in 1992 and it defeats logic that she could have waited for more than 10 years to introduce the issue of a valid will. In any event she should have petitioned for the grant of probate when she was served with the citation and when she was signing the consent. This application is certainly an afterthought and without merit as the property was also shared equally between the two surviving houses of the deceased.

Accordingly I dismiss the application dated 2nd September 2002 but this being a family matter let each party bear their own costs.

It is so ordered.

Judgment read and signed on 18th March 2005.

**MARTHA KOOME**

**KOOME**