



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**SUCCESSION CAUSE 69 OF 2001**

**IN THE ESTATE OF JOSEPH MAINA KARIUKI (DECEASED)**

**PETITIONER - ISAAK KARIUKI WARUIRU**

**Coram: Before Hon. Justice Mwera**

**Isaac Kariuki Maina for Applicant**

**Peter Njogu Kariuki for 1st Respondent**

**Isaac Kariuki Waweru for 2nd Respondent**

**Kazungu – Court clerk**

**R U L I N G**

Isaac Kariuki Maina, the applicant is the son of the deceased Joseph Maina Kariuki.

Maina died on 21/2/2001 and he left what cannot be generally called a small estate, consisting of about six parcels of land in various places, 2 motor vehicles, and 2 bank accounts. The estate was estimated to be worth Sh. 1,392,454/= against the liabilities of Sh. 443,454/=. The applicant now aged 19 years was left with 3 other siblings. Joseph died while resident at Voi.

The administrators are Peter Njogu (the brother of the deceased) and Mzee Isaac Kariuki Waruiru (the father).

The applicant filed the summons for orders to revoke the grant to the two above alleging that:

“... the administrators herein are misusing the properties of the deceased and they have sent away the children of the deceased and failed to pay school fees.”

When called upon to substantiate the above claims, the applicant told the court that his uncle, Peter Njogu had sold sand and ballast that was left behind, sold one motor vehicle No. KSE 958 Toyota and used the money for himself while the deceased’s children had been sent away from school and had become street children for lack of care by Peter. So the applicant desired that he should now take charge of his late father’s estate and he will care for his siblings or that an uncle called John Kinyua be a coadministrator. At the end of the hearing he seemed to favour Samwel Mbugua, another uncle take the place of Peter Njogu. At this hearing the applicant changed his mind about removing his grandfather Mzee Isaac from the administration, saying that he only visited them at Voi and did nothing wrong.

Peter Njogu told the court that when his brother died, the family sat and agreed that he must move to Voi with his own family, occupy the premises his late brother had built there in order to manage the assets and keep the orphaned 4 children going. That he did so and has been educating them, feeding them and generally doing what he can from proceeds from the estate without squandering anything. That the pick up (Toyota) was sold to redeem one property the deceased had mortgaged otherwise the rest of the estate is safe. However, Njogu was keen to cease to be an administrator on account of what he termed the applicant’s changed behaviour since November 2004. Njogu said that the applicant’s maternal uncle, one

Muniu, had moved to Voi after a long absence in Nyandarua and he had incited the young man not only to make false and wild allegations that saw Njogu ending in police hands but he had also treated him with disrespect and insults. Njogu wanted his peace by quitting.

Mzee Isaac Muiruri, an elderly but still clear-minded man and no doubt wise and caring about his grandchildren, maintained that he would remain an administrator and if Njogu left, the family would select one of his other sons to help him. All this he put forth because his son (the deceased) entrusted his children to him and to date they are yet to be mature to get individual titles to the estate. That he has kept safely all the title deeds and it is he who authorized the sale of the Toyota Pick-up so that a title to the property where Njogu and the children of the deceased now live, could be discharged. He is confident that Njogu has done well to bring up his late brother's children and save for Muniu, they should grow up and they shall get their entitlements. He would not see the applicant handling the estate at all. To this old man, he will squander it leaving nothing for the younger sublings. Mzee Isaac said that the applicant has even gone as far as insulting him. But he proposed his son Samwel Mbogua to join in the administration since he, himself lives in far off Molo.

The court considered all the above and concluded that the grant shall not be revoked at all. But Samwel Mbogua whom the applicant, Njogu and Mzee Isaac seemed to agree on, will join the administrators. The court confirmed that from be himself. In this court's opinion the applicant is too young to handle the estate herein for his own benefit and that of his siblings. At age 19, just finished school, unemployed and not married, the applicant may be inclined, not only to be unable to cope, but youthful sense of profligacy cannot be ruled out – to “eat” the estate and yet he has 3 younger brothers and sisters. He also appears still childish.

The court was also of the view that Njogu has not misused any part of the estate. He explained and his father (Isaac) supported him in the move to sell the pick-up to redeem a title. The court also believed that the estate is in good shape and as both said an account could be rendered if required. The applicant cannot claim that the estate is being mismanaged when Njogu has educated him to form 4 (he handed over to Isaac, the applicant the examination slip in court) and the others are following. They live in the house with Njogu. The allegations were thus ill-conceived. It even appeared that he is being incited by this Muniu. He also appeared to be a rather ill-mannered young-man who when speaking/answering his uncle Njogu and grandfather Mzee Isaac tended to show little respect. Such conduct shall have to stop and Muniu should keep clear of this estate and if anything assist with good advice and not incitement of his nephews and nieces. The applicant should exhibit good conduct and cooperation. They will in the end enjoy the estate when they are fit to get their shares. In sum, a fresh P & A form to issue adding:

SAMUEL MBOGUA KARIUKI to the existing administrators Peter Njogu and Isaac Muiruri.

The summons is dismissed.

Orders delivered on 26/10/2005.

J.W. MWERA

JUDGE