

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.1053 OF 1996

IN THE MATTER OF THE ESTATE OF NJOROGE MURAGU – (DECEASED)

RULING

On 24th October, 2003 this court (Waweru J.) ordered redistribution of the Deceased's estate as set out in paragraph 2 of the said order. In sub-paragraph (iv) of that paragraph 1.5 acres of land was allocated to MICHAEL MWAURA, a son of the Deceased of unsound mind, the same to be registered in the name of his mother, TABITHA MBAIRE NJOROGE, to hold the same in trust for him. Tabitha has now come back to court by notice of motion dated 28th November 2003 seeking a review of the above-stated portion of the order so that instead of herself, another son of hers, JAMES WAWERU NJOROGE may be registered proprietor of the 1.5 acres in trust for the said Michael Mwaura, or in the alternative both herself and James Waweru Njoroge be so registered. The application is brought under Order 44, rules 1 and 2 of the Civil Procedure Rules and also under Section 3A of the Civil Procedure Act, Cap.21.

Although the application is opposed by PENINAH WAWERU GAITHO, one of several other beneficiaries, it was conceded by her learned counsel during arguments that she will not be directly prejudiced by the order sought. It was also conceded that it was within the court's unfettered discretion to appoint whomever it deems fit to act as the trustee of Michael. During the hearing of the application that resulted in the orders of 24th October, 2003 it was common ground that it is Tabitha and James Waweru Njoroge who jointly take care of Michael.

I have considered this matter. I cannot see any harm that may be done to anyone by granting the order sought. Tabitha wants to divest herself of the sole responsibility of managing Michael's trust because she is old (being over 86 years old) and ailing and without the necessary energy. Her prayer is therefore reasonable and just in the circumstances. I will grant the application and order that instead of TABITHA MBAIRE NJOROGE alone, the 1.5 acres of land shall be registered in her joint name with JAMES WAWERU NJOROGE to hold the same in trust for MICHAEL MWAURA. It is so ordered. There will be no order as to the costs of this application.

**DATED AND SIGNED AT NAIROBI THIS 17 TH DAY OF
FEBRUARY, 2004.
H.P.G. WAWERU
JUDGE**