



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO. 2721 OF 2002**

IN THE ESTATE OF JORAM WAWERU MOGONDU (DECEASED)

**RULING ON APPLICATION BY WAY OF SUMMONS DATED 5TH**

**FEBRUARY 2004 BY**

**MARY WAIRIMU WAIME**

The applicant Mary Wairimu Waime is also the co-administratrix of the deceased estate, has sought for orders that the following beneficiaries of the deceased estate namely

- 1) Joseph Magondu Waweru
- 2) Elizabeth Wangari
- 3) Robert Njogu Waweru

Do abide with the orders issued by Hon. Justice Mbogholi made on 12th May 2003 by paying a sum of Kshs.150,000/= to each of the above beneficiaries.

Secondly, execution of the order dated 12th May 2003 do issue. This application is brought under the provisions of Section 82 of the Law of Succession Act Cap 160, Rule 49 of the P & A rules and Section 3 A of the Civil Procedure Act.

The application is supported by the affidavit of the applicant. The gist of the matters deposed thereto are to do with issues of the order recorded in court in settlement of the issues of distribution of the estate of the deceased.

The order made on 12th March 2003 directed that each of the following daughters of the deceased he gave Kshs.150,000/= from the net estate of the deceased.

Dorcas Mukami Migwi

Hilda kabura

Farida Wanjiku

Mary Wairimu Waime

According to the applicant all her efforts to get the coadministrator to settle the said amounts due to the beneficiaries have not been successful. Unfortunately my reading of the sections under which this application has been made does not provide for execution of the order if the personal representative of the

deceased has failed to comply with the order. What the applicant is seeking for is an order to compel the administrators to pay the sum as per the consent order. Order 21 of the Civil Procedure Rules which deals with matters of execution is not one of the orders imported to the Law of Succession.

In the absence of a law supporting the prayers sought, I have no basis upon which I can grant the order. I am however persuaded that the personal representatives of the deceased estate herein have failed in their duties and in view of the provisions of section 47 of the Law of Succession and rule 73 of the P & A rules I hereby direct the personal representative do produce to the court a full inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith from the date the grant was issued within ninety days from the date of this ruling.

There will be no award of costs.

Ruling read and signed on 28th May 2004.

**MARTHA KOOME**

**JUDGE**