



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**SUCCESSION CAUSE NO. 32 OF 2003**  
**IN THE MATTER OF THE ESTATE OF**  
**RACHEAL WANJIRU NGUGI .....DECEASED**

**RULING**

This is a very highly contested estate of a deceased person.

Rachael Wanjiru Ngugi died on 19.12.2000 aged 31 after illness.

She was survived by her children:

MW– girl born 27.8.1993

KK – a son born 9.7.1995

These children are still minors.

There is a document headed “WILL” which has appointed DORCAS WAIRIMU KAMAU to be executor and Trustee of that Will dated 28.12.1998. DORCAS Wairimu Kamau is the mother of the deceased RACHEL WANJIRU NGUGI (hereafter deceased).

The said deceased was married to Ngugi Kihara alias Ngugi Kihara Njoroge who had died earlier.

In Kilifi SRM Court cause no. 6 of 2001 Dorcas Wairimi Kamau had filed a petition dated 23.2.01. A grant was issued on 14.6.01.

John Njoroge Kihara a brother of the deceased husband of the said Rachel Wanjiru Ngugi had also filed petition for letters of administration in SRM (Kiambu) in Succession case no. 60 of 2001 in the estate of the said Rachel Wanjiru Ngugi. This petition was dated 14.3.2001. A Grant of Administration was issued on 5.7.2001. On 18.12.2002 these two grants dated 14.6.01 and 5.7.01 were revoked by High Court in Nairobi (Justice Oluoch).

On 5.2.2003 the two suits in Kiambu and Kilifi were ordered closed and the parties ordered to make fresh applications for grant in this estate.

It is after that order that DORCAS WAIRIMU KAMAU filed a petition in this court on 7.2.2003 the document of WILL aforementioned was produced in court and after due process a grant of written will was issued on 24.7.2003.

Further in Succession Suit no. 277 of 203 John Njoroge Kihara applied for a grant of letters of administration in the same estate in his capacity as brother in law of the deceased which by order of Hon. J. Justice Kamau was stayed pending the determination of this case. The order was made on 16.3.2004.

On 26.2.2004 one TERESA WANJIKU NJOROGE filed summons for revocation of Grant of Probate issued to DORCAS WAIRIMU KAMAU made on 24.7.2003 aforesaid. Teresia came to court on strength of a power of Attorney donated to her by JOHN NJOROGE KIHARA on 5.9.1997. It is to be noted that John Njoroge Kihara is the same one whose Succession case 277 of 2003 was stayed by Hon. Judge Kamau in Nairobi pending this suit. He is also her husband.

On 27.2.04 Mr. Odhiambo advocate appeared in this court and applied for a certificate of urgency saying Probate has been granted to Petitioner and the will is being challenged and for revocation of the grant. Certificate was granted with no other orders. On 21.7.2004 the application came before the court for hearing and both Mr. Njoroge and Mr. Kadima appeared.

Mr. Njoroge proposed to adjourning the hearing to carry out discovery. Court ordered discovery within 14 days and hearing dated to be taken at the registry. After that order was made Mr. Kadima rose and addressed the court. He said that the matter came under certificate of urgency and the grant is already issued –

*“We are afraid many things can take place under that grant. I pray for an order that all activities be halted until revocation of application is finalized.” Mr. Njoroge rose and said “We shall not get the grant confirmed. We shall maintain status quo”. It is at this stage that this court said:- “In view of the undertaking given by Mr. Njoroge Counsel for the holder of the grant order is hereby made that all activities by the administrators are ordered halted until hearing of the application of revocation of that grant”.*

A close examination of that order will show that there is error on the face of it. Mr. Njoroge offered to maintain status quo on behalf of his client in reply to Mr. Kadima's request for halting all activities. The order should have been written as follows:-

***“In view of undertaking given by Mr. Njoroge Counsel for the holder of the grant status quo shall be maintained until hearing of the application or revocation of that grant ”.***

To halt all activities of the executor would have left the estate without a legal representative indefinitely. Mr. Kadima did not request for a replacement to carry on the activities of the estate. I understand the main activity is running a bar and the management of property plot no. 118/XXII and a business known as “Three Coins Bar” there are also the minor children residing in that property. They have to be looked after and their needs met. The powers of an executor of a will arise from the will and commence after the death of the testator. A grant of probate cannot be revoked until the will is nullified. It has to be pointed out that the order complained of was made before any arguments on the application was advanced. The order was to adjourn the hearing of application to another date. The advocates addressed the court orally on their way out as it were.

For the above reasons the application is allowed. The order complained of is set aside. It is with error and cannot be maintained in law. The present executor shall continue to manage the affairs of the estate until her grant is revoked by court. Application allowed with costs in the cause.

**Dated this 29th day of October, 2004**

**J. KHAMINWA**

**JUDGE**

**29.10.04**

**Khaminwa – Judge**

**Cege – court clerk**

**Mr. Kiarie**

**Mr. Ngaira holding brief**

**Ruling reading in their presence**