



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 3239 OF 2005**

**IN THE MATTER OF THE ESTATE OF JEAN WAINAINA KABABU (DECEASED)**

**RULING**

1. The application for determination is a Summons dated 24<sup>th</sup> September 2009. It is brought at the instance of Grace Wanjiku Kiambi and Margaret Mungai. It seeks that the grant made herein to Sarah Wanjiku Kabuba and Dennis Gachugu Kabuba be revoked.

2. The applicants are sisters of the deceased, and the children of Jamlick Peter Wainaina J. Kabuba. Their case is that the property the subject of these proceedings did not belong to the deceased, but rather it was property that was initially owned by their father. After their father's death, the property passed to their mother. After their mother died administration of her estate was committed to the deceased herein and that was how the estate of their mother ended up in his hands. They urge that the estate came into his hands as a trustee. They complain that the administrators herein moved for representation to the estate without disclosing to the court that her late husband was a trustee to the subject property and without disclosing them as beneficiaries. Ultimately, the estate was distributed to their disadvantage.

3. The administrators have responded to the application through an affidavit sworn on 2<sup>nd</sup> November 2009 by Sarah Wanjiku Kabuba. She vehemently objects to the allegations made in the application, asserting that all the assets listed in the petition belonged to the deceased, he having inherited them from his father. She avers that the applicants were married at the time the estate of their father was distributed and that one of the children of her father in law was of unsound mind.

4. The proceedings before me turn on the circumstances under which the deceased herein came to be the owner of the property the subject of these proceedings. The court taking cognizance of that fact called for the court files in respect of the estates of the father and the mother of the deceased herein and that of the applicants, that is to say HCSC Nos. 140 of 1981 and 173 of 1990, for perusal purposes. The file in HCSC No. 140 of 1981 was not availed, but that in HCSC No. 173 of 1990 was availed. The latter file is a skeleton. It is not complete and there is nothing in it to indicate how the state of the mother of the applicants and the deceased was distributed. The documents availed by the parties with respect to the two estates are also inconclusive. None of them provide details on how the two estates were distributed.

5. In the absence of critical documents from the causes on the administration of the estates of the parents of the parties hereto, I have scant evidence from which to infer that the property in question might have been trust property warranting revocation of the grant herein. Consequently, I shall find that the application herein dated 24<sup>th</sup> September 2009 is not well founded and I shall, and do hereby, dismiss the same with costs.

6. I note that the entire estate comprises of assets situated within Murang'a County. Consequently, the matter herein shall be transferred to the High Court of Kenya at Murang'a for final disposal.

**DATED, SIGNED and DELIVERED at NAIROBI this 20<sup>TH</sup> DAY OF JANUARY, 2017.**

**W. MUSYOKA**

**JUDGE**