



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 27 OF 2014**

***IN THE MATTER OF THE ESTATE OF STEPHEN WAWERU KIMANI (DECEASED)***

**NANCY MUTHONI WAWERU.....APPLICANT**

***V E R S U S***

**PAUL KIMANI WAWERU ..**

**M M W .....RESPONDENTS**

**ANICET WAWIRA WAWERU**

**SAMMY MURIUKI WAWERU**

**R U L I N G**

1. The summons for revocation dated 9/06/2016 was filed by the Applicant/co-administrator seeking for revocation of grant. The grounds in support of the summons are that the applicant was not notified of the confirmation which was done in her absence. She is not satisfied with the mode of distribution.
2. The application was served on the respondents who are her children. The 1<sup>st</sup> and 2<sup>nd</sup> respondent in whose presence the grant was confirmed did not oppose the application despite having been served with the summons.
3. It was the testimony of the applicant that the deceased was her husband and that the 1<sup>st</sup> and 2<sup>nd</sup> respondents are adult sons namely Paul Kimani Waweru and Samuel Muriuki Waweru 23 and 22 years respectively. The applicant has two other children namely Anicet Wawira Waweru aged 18 years and M M W aged 9. These two younger children accompanied their mother to court.
4. The applicant testified that after her husband's death, her sister in law one Jacinta Nyambura Mwangi chased her away from the home of deceased and demolished her house. The applicant has rented a house in the same locality at Mwea. The said Jacinta took her older children and lied to them that their mother had run away from home to stay with someone else as his wife.
5. This case was filed by the applicant and her elder son Paul Kimani Waweru. Both were issued with letters of administration intestate jointly. Thereafter Jacinta filed an application to substitute the applicant as an administrator and proceeded to have the grant confirmed with the co-administrator Paul Kimani Waweru. The applicant says her two elder sons took a bigger share than her which is not fair.
6. The applicant's proposed mode of distribution is as follows:-

- (i) Nancy Muthoni - 0.45 ha
- (ii) Paul Kimani - 0.10 ha.
- (iii) M M W - 0.10 ha.
- (iv) Anicet Wawira - 0.05 ha.
- (v) Sammy Muriuki - 0.10 ha.

7. The applicant states that she sold a portion of 0.10 ha. to one Doris Wairimu to facilitate the succession cause. Doris was given her portion in the grant by the co-administrator. The applicant states that she is still willing to give Doris her portion. This will be done after the applicant receives her share of 0.45 ha. It was not explained why the share should not go to Doris directly.

8. The applicant said that part of the purchase price Kshs.230,000/= was paid to Jacinta after she was chased away from home. The sale of the portion to Doris had been agreed upon by the applicant and her sons.

9. The confirmed grant shows distribution as follows:-

- (i) Paul Kimani Waweru - 0.30 ha.
- (ii) Sammy Muriuki Waweru - 0.20 ha.
- (iii) M M W - 0.10 ha.
- (iv) Anicet Wawira Waweru - 0.10 ha.
- (v) Doris Wairimu Mwangi - 0.10 ha.

10. From the evidence on record, I find that Jacinta Nyambura Mwangi who is a sister to the deceased was a stranger in the deceased's estate. It was wrong and fraudulent of her to substitute herself in place of the applicant who was the widow of the deceased by lying to the court that the applicant ran away from home and could not be traced.

11. The law does not recognize her to be appointed administrator of the estate. Even if the applicant could not be traced for sometime, she has adult children and one of them ought to have applied to replace the applicant as a co-administrator.

12. The substitution of Jacinta Nyambura Mwangi as a co-administrator was based on false information and non-disclosure of facts material to the case rendering the proceedings and the order therefore null and void.

13. In the interests of justice, the applicant requires to be reinstated as an administrator alongside her son Paul Kimani Waweru. This being the situation, I see no need to revoke the grant issued in this case for it will serve no useful purpose. It suffices to set aside the orders for distribution which is based on the invalid substitution of parties.

14. For these reasons, I hereby declare the said substitution by Jacinta Nyambura Mwangi a nullity and set aside the confirmation of grant orders made on 7/05/2015. The applicant is hereby reinstated as an administrator.

15. The co-administrator Paul Kimani Waweru and Sammy Muriuki Waweru are the elder sons of the deceased allegedly colluding with their aunt Jacinta to keep the applicant out of the administration of the estate. They were served with the hearing notice but failed to attend court.

16. The law applicable in distribution of the estate is Section 35 and 40 of the Succession Act. The children of the deceased shall be treated equally in the distribution with the surviving spouse being an additional unit. The deceased was survived by a widow and four children in this case.

17. It is also important to note that the family has no problem giving the purchaser Doris Wairimu the plot they sold to her for facilitation of the succession. The portion had been allotted to her during confirmation of grant. Contrary to what the applicant states that she will give the portion from her share, its economical in way of cost to give the portion directly to the purchaser.

18. The applicant has allocated to herself the lion's share of the estate. This is contrary to the law since all the beneficiaries are entitled to equal shares.

19. I proceed to confirm the grant and distribute estate as follows:-

- (i) Nancy Muthoni Waweru - 0.14 ha
- (ii) Paul Kimani Waweru - 0.14 ha.
- (iii) Sammy Muriuki Waweru - 0.14 ha.
- (iv) M M W - 0.14 ha.
- (v) Anicet Wawira Waweru - 0.14 ha.
- (vi) Doris Wairimu Mwangi - 0.10 ha.

20. The share of the minor child M M W will be held in trust for him by the Applicant Nancy Muthoni Waweru until he attains the age of majority.

21. A certificate of confirmation to issue in the foregoing terms.

22. Each party to meet his/her own costs of this summons.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 8TH DAY OF MARCH, 2017.**

**F. MUCHEMI**

**J U D G E**

**In the presence of:-**

**Applicant**

**3<sup>rd</sup> Respondent**