



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

**SUCCESSION CAUSE NO. 1140 OF 2002**

**IN THE MATTER OF THE ESTATE OF HENRY NJAU NGOTHO (DECEASED)**

**JUDGMENT**

1. The deceased person the subject of these proceedings, Henry Njau Ngotho, died on 7<sup>th</sup> May 1997.
2. Representation to his estate was sought by one Joyce Njeri Njau, in her alleged capacity as widow of the deceased, in a petition lodged in Kiambu SPMSCS No. 210 of 1997 on 19<sup>th</sup> June 1997. The petitioner listed herself and six (6) other persons, whose relationship with the deceased was not disclosed, as the survivors of the deceased. The six were Lucy Nduta, Judy Muthoni, Elizabeth Nyacuna, Rachael Kabura, Peter Ngoto and Hazal Mwaniki. The deceased was alleged to have died possessed of six (6) assets, being Kabete/Kibichiku/814 and 815, Muguga/Kahuro/750, 850 and 1141, and Kabete Dairy Account No. [particulars withheld] Commercial Bank Account.
3. A notice of the initiation of the cause was published in the *Kenya Gazette* of 27<sup>th</sup> June 1997 in Gazette Notice No. [particulars withheld]. A grant of letters of administration intestate was made to the petitioner on 30<sup>th</sup> July 1997.
4. Several interlocutory applications were filed in the cause thereafter, but the same were not heard and disposed of for the matter was transferred to the High Court subsequently on grounds of jurisdiction.
5. A summons was taken out in this cause by one Ruth Wanjiru Njau, dated 14<sup>th</sup> May 2002, seeking revocation of the grant made by the Kiambu Court. In the affidavit sworn on 30<sup>th</sup> November 2002, in support of the application, the applicant averred to be the second wife of the deceased, and complained that she and her daughter had been omitted from the list of the survivors of the deceased.
6. The administrator responded to the application vide her affidavit sworn on 23<sup>rd</sup> September 2002. She asserted that the deceased had not married the applicant at any time, but that the applicant had been working for the deceased as a bar-maid.
7. When the matter came up for directions on 4<sup>th</sup> November 2002 before Khamoni J. an issue arose as to the pendency of two causes at the High Court over the same estate, that is to say HCSC No. 2096 of 1999 and HCSC No. 1140 of 2002. It was submitted that HCSC No. 1140 of 2002 was commenced by the applicant during the pendency of HCSC No. 2096 of 1999 as the parties awaited hearing and disposal of two applications brought by the applicant and another under section 26 of the Law of Succession Act, Cap 160, Laws of Kenya, for reasonable provision. Counsel for the applicant then applied orally to withdraw HCSC No. 1140 of 2002 so that the applicant could pursue her claim under section 26 in HCSC No. 2096 of 1999.
8. Acting on the oral application made by counsel for the applicant, to withdraw HCSC No. 1140 of

- 2002, Khamoni J. ordered on that 4<sup>th</sup> day of November 2002 that HCSC No. 1140 of 2002 be marked as withdrawn. The court thereafter proceeded to give directions on the disposal of the applicant's application under section 26 in HCSC No. 2096 of 1999, to the effect that the same was to proceed *viva voce* as from 9<sup>th</sup> December 2002 and the parties to call about seven witnesses.
9. So as from 4<sup>th</sup> November 2002 the cause in HCSC No. 1140 of 2002 terminated and the file ought to have been closed and sent to the archives.
  10. Despite the existence of the order of 4<sup>th</sup> November 2002, which had not been reversed, the advocates for the applicant, the same who had applied for and secured the withdrawal of the cause on 4<sup>th</sup> November 2002, journeyed to the court registry on 21<sup>st</sup> May 2003, and caused the summons for revocation of grant dated 14<sup>th</sup> May 2002 to be fixed for hearing. They again visited the registry for the same purpose on 22<sup>nd</sup> January 2004, 30<sup>th</sup> March 2004 and 16<sup>th</sup> July 2004. The hearing date for 23<sup>rd</sup> November 2004 was secured by consent on 16<sup>th</sup> July 2004, for the hearing of the summons for revocation of grant dated 14<sup>th</sup> May 2002.
  11. The hearing commenced on 23<sup>rd</sup> November 2004. Evidence was taken from Margaret Ngoiri Njau, Hannah Njambi Njau, Samuel Nduati Njau and Joyce Njeri Njau. Trial concluded on 26<sup>th</sup> November 2014. Although directions were given for filing of written submissions, I have not across any on the record.
  12. I find myself in difficulty in this matter. The cause herein terminated on 4<sup>th</sup> November 2002 when the cause was marked as withdrawn. The withdrawal meant that the application for revocation of grant dated 14<sup>th</sup> May 2002 died with the cause. It was not available for hearing and determination thereafter. It would appear that the proceedings conducted thereafter were in a vain, a waste of precious judicial time.
  13. Although the record is plainly clear that what the parties fixed for hearing after 4<sup>th</sup> November 2002 was the application for revocation of grant dated 14<sup>th</sup> May 2002, the evidence tendered appears to have been geared to prove the application for reasonable provision. That application had been filed in HCSC No. 2096 of 1999, and not in the instant cause. There is nothing on record in this cause to indicate that HCSC No. 2096 of 1999 had been consolidated with the instant cause, for the latter application could only be prosecuted in this cause under those circumstances.
  14. I called for the court file in HCSC No. 2096 of 1999 for perusal, and the same was placed in my hands. The same has three covers. On the outer cover is scrolled in large characters the words 'Consolidated with P&A 1140 of 2002'. The principal pleadings in the said file relate to the applications under section 26 of the Law of Succession Act, seeking reasonable provision. The first application is by Ruth Wanjiru Njau and her daughter. It is dated 29<sup>th</sup> June 2001. The other is by Margaret Ngoiri Ngotho, and is dated 23<sup>rd</sup> July 2001.
  15. There is nothing on record in that court file indicating that the matter was ever placed before a Judge. The only time it was before a judicial officer was on 9<sup>th</sup> July 1999, when the Principal Deputy Registrar fixed the matter for directions on 2<sup>nd</sup> December 1999. There is nothing to show that directions were indeed given on the said date, or at all, and whether the matter proceeded for trial one way or the other thereafter. What is certain though is that there is no order on record in that cause consolidating it with HCSC No. 1140 of 2002.
  16. I have come to the conclusion that following the events of 4<sup>th</sup> November 2002, nothing else could or ought to have been done in this cause. The application that I am called upon to determine died on that day. There is therefore nothing for me to determine. As noted earlier the proceedings conducted before Kubo J., and later before me, were in vain.

17. The final orders that I am moved to make in the circumstances are: -

- a. **That the court file in respect of this cause shall be closed and taken to the court archives;**
- b. **That the court file in Kiambu SPM CSC No. 210 of 1997 shall be removed from this file and put together with HCSC No. 2096 of 1999; and**
- c. **That there shall be no order as to costs.**

**DATED, SIGNED and DELIVERED at NAIROBI this 3<sup>RD</sup> DAY OF JUNE, 2016.**

**W. MUSYOKA**

**JUDGE**