



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**SUCCESSION CAUSE NO. 143 OF 2009**

***In the Matter of the Estate of Nicholas Mworira Mwereria- Deceased***

**DOROTHY NKATHA KOOME.....1<sup>ST</sup> APPLICANT**

**LINDA KAREGI MWORIA.....2<sup>ND</sup> APPLICANT**

**Versus**

**JANET KAREGI MWORIA.....1<sup>ST</sup> PETITIONER**

**BISHOP WILLIAM MURIUKI.....2<sup>ND</sup> PETITIONER**

**ERIC KOOME MWORIA.....INTERESTED PARTY**

**RULING**

**Substance abuse by a beneficiary**

[1] The application dated 4<sup>th</sup> December, 2015 has been made by the Interested Party who is essentially seeking for review or setting aside of the order by Makau J in which it was ordered that the 1<sup>st</sup> Applicant together with the 2<sup>nd</sup> Applicant shall forthwith collect rent from the 1<sup>st</sup> Applicant's husband's property known as the Driving School on behalf of the Interested Party until such time as he would be able to manage the premises. The major reasons given for applying are;

- (1) That the Interested Party was neither served with notice for hearing nor given an opportunity to be heard on the summons which gave rise to the Ruling in question;
- (2) That the Applicants did not disclose the true condition of the Interested Party to the court during the hearing of the application and delivery of ruling thereto which is; he had been treated and discharged from rehabilitation Centre and he is now able to manage his own affairs.

In light of the above reasons, he asked the court to review, set aside or vary the impugned order.

[2] This application was hotly contested through replying affidavits. Quite rational and powerful arguments were also made by M/S Nelima on behalf of the Respondent. M/S Nelima argued that the application does not meet the threshold for review. She also argued that the letter by Mr. Roy, the Administrator of the Rehabilitation Centre to which the Interested Party had been committed, is not proof

that the condition of the Interested Party has improved and she gave plausible reason for that submission; that the said Mr. Roy is not a doctor and, therefore, is not competent to give any or authoritative diagnosis that the Interested Party has recovered. She discounted the said letter by Mr. Royas showing nothing more than the Interested Party had been discharged from the Rehabilitation Centre. Again, M/S Nelima summed up her submissions that the only person who can tell the court about the condition of the Interested Party is Dr. Awiti who has been treating him. On that basis, she beseeched the court to dismiss the application.

## **ANALYSIS AND DETERMINATION**

[3] This case presents a kind of squirm as shall become clearer later. Upon thoughtful reflection on the matters being raised, I am impelled to engage into an empirical but careful inquiry into the matters to do with the condition of the Interested Party which makes him incapable of managing his affairs. I have so decided because of three reasons. First, the order being challenged was made almost exclusively on the basis that the Interested Party's condition was that he was not able to manage his own affairs especially the estate property in issue; and a trust was created for him. Second, it has been stated that the said condition of the Interested Party has been caused by continued use of alcohol which has affected his management skill. This connotes substance abuse. See the medical notes in the file. Third, at this point, I must admit that the taga person is "*incapable of managing his affairs*" often falls in our lips, but sometimes we attribute less to it than it really portend. This is one case where I find the claim that the Interested Party is not able to manage his affairs to be of specific legal significance; notably, because continued use of alcohol may be classed as substance abuse under the Mental Health Act if it causes or exacerbates persistent or recurrent social, occupational, psychological or physical problems. Therefore, given the allegations being advanced, I take this case very seriously. Thus, whether or not the Interested Party has recovered is a matter of substantive decision by the court upon expert opinion. Accordingly, I think the issue requires further examination of the condition of the Interested Party by experts before I could pronounce myself on the application before me. On that basis, I direct that expert evidence shall be provided to the court within such time and by such experts as shall be agreed among the parties or directed by the court- which will depict the ability or otherwise of the Interested Party to manage his own affairs. Upon receipt of the said reports, I shall give orders on the request for review, setting aside or varying of the orders made on 7<sup>th</sup> May 2015 within this cause and the applicable law. I will also require the Interested Party to be present during the inquiry herein. Last but not least, unless with informed consent of the Interested Party to the contrary, these proceedings shall be had in camera due to the nature of the matter under inquiry. It is so ordered.

**Dated, signed and delivered in open court at Meru this 8<sup>th</sup> day of September 2016**

**F. GIKONYO**

**JUDGE**

**In the presence of:**

Mr. Mwanzia advocate holding brief for Mr. Rimita advocate for 1<sup>st</sup> and 2<sup>nd</sup> petitioner.

Mr. Mwanzia advocate holding brief for Mr. Nelima for 2<sup>nd</sup> petitioner.

Mr. Nyenjire advocate for interested party – absent.

**F. GIKONYO**

**JUDGE**