



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO.430 OF 1983**  
**IN THE MATTER OF THE ESTATE OF MURAGA KABUCHO (DECEASED)**

**FRANCIS NJUGUNA KABUCHO.....RESPONDENT**

**VERSUS**

**JOSEPH NDUNGU KABUCHO 'B'.....1<sup>ST</sup> APPLICANT**

**PAUL KABUCHO WANJIRU ..... 2<sup>ND</sup> APPLICANT**

**FRANCIS NJOGU WANJIRU.....3<sup>RD</sup> APPLICANT**

**NAOMI WANJIRU WANJIRU.....4<sup>TH</sup> APPLICANT**

**RULING**

1. The deceased herein died intestate on 29<sup>th</sup> January 1967. He was polygamous and was survived by two wives and their children listed below;
  1. House of RACHAEL MUTHONI MURAGA (who died in 1989);
    - a. Wangari Njau - daughter (who died in 2005)
  2. House of WAMBUI MURAGA ( who died in 1954)
    - b. Kabucho Muraga - son (who died in 1952)
    - c. Wangari Kibiru alias Kanuthu - daughter (who died in 1963)
2. The parties herein are grandchildren and great-grandchildren of the deceased. The respondent and 1<sup>st</sup> applicant are sons of Kabucho Muraga, while the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> applicants are great-grandchildren of the deceased. It is the applicants case that persons having a beneficial interest in the deceased's estate at the time of his death and their relationship to the deceased are:
  - a. Joseph Ndungu Kabucho 'A' - grandson
  - b. Francis Njuguna Kabucho - grandson (Respondent/administrator)
  - c. Joseph Ndungu Kabucho 'B' - grandson (1<sup>st</sup> Applicant)
  - d. Paul Kabucho Wanjiru - great grandson

- e. Francis Njogu Wanjiru - great grandson
  - f. Naomi Wanjiru Wanjiru - great granddaughter
3. Francis Njuguna Kabucho, the respondent herein petitioned for Grant of Letters of Administration, which were issued on 14th September 1983 and confirmed on 16<sup>th</sup> December 1994.
  4. The applicants have brought this application seeking to set aside and/or review the confirmation order issued in this cause on 16/12/94 on the grounds that the grant herein was confirmed without the knowledge, concurrence or consent of all the beneficiaries and subsequently the respondent fraudulently took the whole share of the deceased's estate purporting to be the only beneficiary and had the property (Title Number Ngecha/Mbari Yaigi/37 registered in his name as the sole proprietor. He thus prayed that the court sets aside the order of confirmation hereof as the same is vitiated by fraud, misrepresentation and irregularities and that the court should order the parties to file a fresh mode of distribution.
  5. The respondent in his replying affidavit did not object to the estate being distributed amongst himself and the applicants, but proposed that he be given the lion's share as he had spent a lot of time and money in pursuing the cause herein, money which he is yet to be refunded by the other beneficiaries.
  6. The applicants herein have no issue with the respondent having been issued with the Grant of Letters of Administration intestate. It is their case that they had always entrusted the respondent as the older brother/uncle to pursue the grant. It is the mode of distribution of the estate proposed in the affidavit in support of summons for confirmation that they are against as the same was obtained without their consent, the result being that the other beneficiaries were disinherited. I have duly perused the file and note that the affidavit sworn by the respondent herein in support of his application for confirmation of the grant, only himself and the deceased widow (Rachel Muthoni) were listed as surviving the deceased. Courts have previously held that in a situation like this where a party is aggrieved by the certificate of confirmation only, the same should be set aside without affecting the validity of the Grant of letters of administration (see **IN RE ESTATE OF NGUGI (DECEASED) (2002) 2KLR 434** and **IN RE ESTATE OF GITAU (DECEASED) (2002) 2KLR 430**).
  7. It is not disputed by the Respondent that the Applicants herein are equally entitled to a share of the deceased estate as beneficiaries. In the case of **IN THE MATTER OF THE ESTATE OF JOHN KAMAU GICHUHI (DECEASED) NRB. HIGH COURT SUCCESSION CAUSE NO.833 OF 2003**, it was held that grandchildren are entitled in equal shares to the estate of their deceased grandfather where their own parents are dead. As the estate of the deceased was not distributed equally among the beneficiaries, this application is allowed. The order of confirmation of Grant dated 16th December 1994 is herein set aside and the certificate of confirmation issued therein cancelled. Consequently, any transaction involving land parcel No. Ngecha/Mbari Yaigi/37 pursuant to the said certificate of confirmation is hereby cancelled. The registration of the said land parcel shall revert to the deceased's name. The respondent should immediately re-apply for the confirmation of the Grant with a fresh proposed mode of distribution to include all the beneficiaries herein. The applicants shall swear affidavits indicating how they want the estate shared. The same shall be heard and determined by the court.

**DATED at NAIROBI this 7<sup>th</sup> day of April 2015**

**A.O. MUCHELULE**

**JUDGE**

**DELIVERED at NAIROBI this 7<sup>th</sup> day of April; 2015**

**W. MUSYOKA**

**JUDGE**