



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
SUCCESSION CAUSE NO.1999 OF 2008
IN THE MATTER OF THE ESTATE OF JAMES WATITU (DECEASED)

HENRY EUTYCHUS NYOIKE.....APPLICANT

FRANCIS MWANGI WATITU.....RESPONDENT

JUDGMENT

PLEADINGS

The matter presented in this Court for determination is by way of summons for revocation or annulment of grant of 19th July, 2011 brought by the Applicant Henry Eutyachus Nyoike. The application is based on **Section 76(a) (b) (c) and (d) (ii) of the Law of Succession Act Cap 160 and Rule 44 of the Probate & Administration Rules.**

The thrust of the matter is as follows;

- i. The grant of letters of administration issued to James Waititu Kimani of 21st January, 2009 for the estate of Beatrice Wanjiku Nyoike be revoked and annulled and the certificate of confirmation of grant of 19th July, 2010 be set aside.

The orders are premised on the following facts;

- a. The late James Watitu Kimani brother to the late Beatrice Wanjiku Nyoike fraudulently obtained the grant by falsely stating that the deceased had no children
- b. The late James Watitu Kimani as administrator to the estate of late Beatrice Wanjiku Nyoike mismanaged the properties of the deceased's estate in that he transferred some to his own children to the exclusion of the deceased's children.
- c. The properties of the late Beatrice Wanjiku Nyoike have been irregularly included in the estate of the late James Watitu Kimani.
- d. The administrators of the estate of James Watitu Kimani have already and are in the process of transferring properties that belonged to the late Beatrice Wanjiku Nyoike to themselves and 3rd parties.

On 15th August, 2012 under certificate of urgency the Applicant filed an application amending the earlier application to include the following;

- a. That the late James Watitu Kimani fraudulently caused the transfer of property known as

Ngong/Ngong/32675 being two (2) acres portion of the property originally known as Ngong/Ngong/902 to his name from his mother Zipporah Nyakio Kimani (deceased) in violation of her wishes for this property was to be preserved for the benefit of the children of the late Beatrice Wanjiku Kimani(deceased) represented by the Applicant.

b. The Petitioner illegally gained access into the property and constructed permanent structures.

On 18th August, 2011 the Applicant obtained interim temporary orders of injunction restraining the Petitioners' their agents, servants, employees from trespassing, building, disposing of Ngong/Ngong/32675 being a 2 acre portion of property originally known as Ngong/Ngong/902 and Ngong/Ngong/30040 until hearing and determination of the matter.

The Respondents' by an application under certificate of urgency filed on 28th September, 2012 opposed the exparte orders of 16th August, 2011 and sought the same to be vacated, varied or annulled. On 20th February, 2013 the Court maintained status quo both Applicant and Respondent were to exchange pleadings and file affidavits. The defendants were to be cross examined on the affidavits filed.

HEARING

The hearing commenced on 21st October, 2014, Henry Eutychus Nyoike son of Beatrice Nyoike (deceased) relied on the supporting affidavit of 15th August, 2011 and Further Affidavit filed on 30th April, 2013. In a nutshell the Applicant stated his late mother Beatrice Nyoike was a daughter to Wilson Kimani Watitu and Zipporah Nyoike his grandparents. Wilson Kimani Watitu was the registered owner of Ngong/Ngong/902 upon his death, Zipporah Nyakio his wife and Applicant's maternal grandmother subdivided the land into;

- i. Zipporah Nyakio Kimani - 2.6 acres
- ii. James Watitu Kimani - 2 acres

(iii) Fredrick Kimani Nginja - 2 acres as evidenced by the Petition Form marked **'HEN2'** shown in the mutation form and confirmed grant in **Succession Cause 1602 of 2000**

The Applicant and his siblings Kenneth Kimani, Judy Nyoike and Jimmy Nyoike resided in the U.S.A at the time their late brother Kenneth Wilson Kimani Nyoike and Uncle Fredrick Kimani Nginya were informed by the deceased grandmother of her wish that her two (2) acres should be inherited by the children of her later daughter Beatrice Wanjiku Nyoike and the 0.6 acres should be used as the family burial site.

In 2006, when the said Zipporah Nyakio Kimani was ill and incapacitated, the administrator James Watitu Kimani father to the Respondents herein; Wilson Kimani Watitu, Zipporah Nyakio Peter, Francis Mwangi Watitu and Fredrick Gikonyo Watitu caused the transfer of the 2.6 acres of their grandmother to be transferred to himself.

In the same year, James Watitu applied for and obtained grant of letters of administration of the Applicant's mothers estate late Beatrice Nyoike in **Succession Cause 48/2006** where he deponed that the deceased had no children and the dependants were James Watitu Kimani (himself) and his mother Zipporah Nyakio Kimani (his mother). This is evidenced by the annexed supporting affidavit to the application of 16th October, 2006 marked **'HEN4'**

The late James Watitu obtained the confirmed grant for the estate of Beatrice Nyoike on 6th November, 2006 and all the property namely;

1. Proceeds of Barclays Bank Account
2. Dandora Estate House No. C3105
3. Plot No. 2500 Oljororok Scheme
4. Plot No. 831 L.R. 6845/13

5. Ngong/Ngong/3561
6. Nation Printers & Publishers shares
7. Embakasi Ranching Shares

The documents of transfer of Nation Media Group Shares from the deceased sister Beatrice Nyoike to the deceased brother and administrator James Watitu were annexed and marked “**HEN 5**” and included Kshs. 245, 092/=. There were proceeds of 1,000 Nation Media Shares that were sold obtained by the deceased’s administrator of the Applicant’s mother’s estate.

The Applicant’s brother late Kenneth Wilson Kimani Nyoike filed to obtain grant for letters of administration of their mother’s estate; Beatrice Nyoike in **Succession Cause No. 2347 of 2003** but the grant was not issued as he did not obtain consents from all the siblings as they were in the U.S at the time.

The Applicant tried amicably resolve and settle the matter out of Court through meeting the family members and sought intervention from the local administration but was unsuccessful. He attached minutes of the family meeting held on 29th October, 2011 marked as “**HEN 6**” when it was agreed that they were to be allotted the 2 acres. The Respondent objected as they were not part of the meeting.

The Applicant then filed Objections and revocation of grant application in **Succession Cause No. 48 of 2006** and the present suit **Succession Cause No. 1999 of 2008**.

In cross examination by the Respondent’s advocate’ the Applicant stated that his father the late Humphrey Njau Nyoike and his mother Beatrice Nyoike separated and divorced in 1976.

The late father called his best man and asked him to take their mother and her children back to her home. They came to their maternal grandparents in Ngong Matasia. The children went back to their father. They lived in Harambee Estate and later moved to Lavington.

The Applicant fell out with his late father as he secretly visited his mother and he moved out and lived in YMCA and continued to visit his mother in Ngong. After his formal education he relocated to the U.S. Later he learnt his mother was sick and she moved to Dandora Estate Phase 4 and later his late father allowed her to live in the Harambee Estate House.

In September, 1989 she died. He remained bitter with his father and did not attend his late mother’s funeral due to his altercation with his father over the burial of his mother. His siblings Edward, Judy and Jimmy attended the funeral. His mother was buried in the grandparents home/farm.

The Applicant attributes the problem of administration of his late mother’s estate to the late maternal Uncle James Watitu. He forged written consent of his grandmother in distribution of his mother’s estate as the application was made in 2006 yet she died in 2005. The estate of his mother was commingled with his estate including the 2 acres that was for their mother from her grandparents. He claimed he was not to blame for what happened; the separation and divorce of his parents he secretly was in contact with his late mother. He demands what is rightful theirs.

DWI Wilson Kimani Watitu one of the sons of the late James Kimani Watitu relied wholly on the affidavit filed on 24th May, 2013. He claimed he was approached by Kenneth Nyoike a son to the deceased Beatrice Nyoike to attend the family meeting. He went and before long he left the meeting. As he walked away he was followed by Kenneth Kimani Nyoike he was asked to sign a document which he did but did not know its contents. He was given 200/=. He was confused and drunk and did not participate in the meeting.

DWII Abraham Gitau Watitu an uncle to the children of both the administrators and the deceased’s mother informed the Court that in 1984, Beatrice Wanjiku Nyoike told him that her children neglected her. She left the matrimonial home and came back to her parents. They as the family took care of her and finally when she died they buried her. He opposed the Applicant’s claim to the estate of the mother’s family.

PWII Fredrick Kimani Nginya relied on the affidavit he filed on 30th April, 2012. He is son to late Wilson and Zipporah Kimani Watitu and brother to late James Watitu Kimani and late Beatrice Wanjiku Nyoike. When their parents died Zipporah Kimani Watitu obtained grant of letters of administration for the estate of Wilson Watitu and it was agreed by consent of all beneficiaries that Land Parcel Ngong/Ngong/902 comprising of 6.6 acres was to be divided amongst them. Each beneficiary got 2 acres and their mother got 2.6 acres. Their late mother expressly stated that upon her demise her share was to be divided among the four (4) children of her late daughter and their late sister Beatrice Nyoike who were in the U.S. The Green card that evidenced the subdivision and for issuance of new title deeds was annexed as **“FKN4”**. His late brother James Watitu obtained grant of letters of administration and confirmed grant to the estate of Beatrice Nyoike and deponed that she had no children a fact he knew was not true. His late brother James Watitu caused the transfer of their mother’s portion of the land to himself and had their mother put her thumbprint at a time she was ill incapacitated and had dementia. This was contrary to her wishes.

He made frantic efforts to stop the transfer by the brother; he put cautions on the land and approached the local administration and they held several meetings which culminated in restrictions placed on the land. Copies of correspondences are annexed **“FKN 6A and 6B”**

After their mother’s demise, then James Watitu had the restrictions on the land set aside and obtained the land as evidenced by **“FKN 7”**. Upon his brother’s death the children of the deceased obtained a grant wherein they obtained 1.407 hectares, the legitimate portion of James Watitu 2 acres and their late mothers portion 2.6 acres.

As indicated in the confirmed grant of their late father Wilson Kimani Watitu of 29th October, 2001 annexed to Fredrick’s affidavit marked **“FKN 2”** the Land Parcel Ngong/Ngong/902 was divided between the late mother and both brothers and later their mother’s share was to be allocated to the children of their sister and her daughter according to her wishes. He told the Court he wanted the wishes of his late father and late mother implemented as those were their wishes. They did not write down but they told him and others that 2 acres should be for the children of their daughter Beatrice.

PWIII Clement Sirantu Nkuruna Lands Registration Officer recalled that 6th June, 2003 a complaint was lodged with the Olokoira Control Board from one of the beneficiaries in relation to Ngong/Ngong/902. They investigated the matter of the complaint raised by Fredrick Nginya that Ngong/Ngong/902 was subdivided into five (5) portions instead of three (3) portions as indicated in the confirmed grant of deceased Wilson Watitu of 29th October, 2001. He found that;

The additional three (3) portions belonged to the deceased James Watitu. The Land Control Board conducted proceedings where and Zipporah Nyoike was in the meeting she did not seem to have dementia, she communicated through a translator a lady she came with. In the end there was no objection and the restriction placed on the said land was removed by a letter from their Chairman of the Land Control Board, the District Officer to the District Land Registrar. After the subdivision James Watitu ended up with 3 $\frac{3}{4}$ acres as opposed to 2 acres in the confirmed grant.

DWII Francis Mwangi Watitu a son of the deceased James Watitu informed the Court that he is the administrator of the late father’s estate. He relied on the affidavit he filed in Court on 24th May, 2013. He told the Court that he was born and grew up on the disputed land. His mother died early on in 1978 and he and his siblings were brought up by their grandmother Zipporah Nyakio Watitu.

His father bought the suit property Ngong/Ngong/902 as evidenced by the attached Agreement to his affidavit marked **“FMW1”** from his late father note book. His late father took care of his grandparents for over 15 years and made provision from them. According to the grant from his late father’s estate the suit property Ngong/Ngong/32675 was divided equally between the four (4) siblings children of the deceased James Watitu. Earlier some of the land was sold in 2003 and 2006 while their father was alive.

He begun to built on the land a permanent house where he was shown by his late father. His uncle Fredrick supervised the construction. They all lived peacefully on the land until 2010 when the Applicant

Henry came in and demanded her late mother's share of the land. A family meeting was held without consultation or involvement of all family members. He alleged that his uncle Fredrick Kimani demanded to be bribed with Ksh. 7.5m to withdraw his evidence from this case.

The Respondent is aggrieved by the Applicant's claim on the following grounds:

- a. There is no evidence and/or documentation whatsoever to support the allegation that their late grandmother Zipporah Nyakio Kimani expressly stated that her share of Land Parcel Ngong/Ngong/905 be given to the children of her late daughter Beatrice Nyoike.
- b. The portion of 2.6 acres of Zipporah Nyakio was transferred to their father James Waititu and it was never part of the estate of the late Beatrice Wanjiku.
- c. Zipporah Nyakio Watitu did not have dementia and she transferred her land Ngong/Ngong/30040 to the deceased James Watitu.
- d. The estate of Beatrice Nyoike consists of properties whose documents of ownership were returned to the Applicants as stipulated in annexed documents "FNW 1A and B" to his affidavit and there is no further claim for the estate.

The Respondent objected to the proposal of the family meeting held on 2nd April, 2011 as attached "FKN 8" as they were not invited and they did not participate at all. The Respondent is of the view that the Applicant and his siblings do not have a legitimate claim to the estate of the deceased their father James Watitu.

The Respondent established in the course of their matter that the Applicant and siblings have inherited from their late father's estate and therefore the Applicant is not a squatter as he alleged before the Kajiado North Land District Tribunal as they have properties from their late father's estate.

ISSUES

The pleadings and oral evidence presented by the parties disclose the following issues for determination;

- a. The grant issued to the late James Watitu Kimani and confirmed for the estate of Beatrice Wanjiku Kimani be revoked or annulled.
- b. Whether the Applicants and his siblings are entitled to inherit the property comprised of their late mother's estate.
- c. Whether the Applicants have a legal right to inherit from the estate of Wilson Kimani Watitu grandfather and the estate of James Watitu Kimani Uncle?
- d. If so in any of the above question/issues then what is the most equitable mode of distribution from both the Applicants and his siblings and Respondent and his siblings?

SUBMISSIONS

The Petitioners/Respondents submitted through Counsel as follows;

- a. They obtained a grant of letters of administration intestate and the same was later confirmed and they distributed the estate of the deceased James Watitu Kimani. All through the process no objection was raised even after they advertised the grant in the Kenya Gazette.
- b. That the Applicant sought in the present matter to have the grant of letters of administration to James Watitu Kimani be revoked. In this Court file there is no grant of letters of administration granted to the deceased but it is about the estate of the deceased being distributed.
- c. Vide **Section 76 Law of Succession Act Cap 160** states that application for revocation or annulment ought to be made to the Court on its own motion or by an interested party. The Applicant is not an interested party he is a Nephew to the deceased James Watitu Kimani.
- d. The Applicant ought to have pursued his claim(s) in **Succession Cause 480 of 2006 (the estate of Beatrice Wanjiku Nyoike)** rather than in **Succession Cause 1999 of 2008 (in the estate of James Watitu Kimani)** and also pursued rights in **Succession Cause 1602 of 2001(in the estate of Wilson Kimani Watitu).**

- e. Land Parcel Ngong/Ngong 902 did not belong to Wilson Kimani Watitu as evidenced by the Agreement of sale but to James Watitu Kimani and was transferred to Wilson Kimani Watitu as at the time of his death.
- f. The confirmed grant of 29th October, 2001 did not include Beatrice Wanjiku Nyoike as she died in 1989 and she did not live on the suit property and did not build a house.
- g. The Applicant's mother Beatrice Wanjiku Nyoike was divorced and all children were left with her husband she was considered under Gikuyu Customary Law to be childless.
- h. There was no oral Will proved by the Applicant in terms of **Section 9 of Law of Succession Act Cap 160**.
- i. All the properties that belonged to the estate of Beatrice Wanjiku Nyoike that comprised of the estate of James Watitu Kimani were transferred by the Respondent's lawyer to the Applicant's lawyer as evidenced by "**FMW 1A and B**".

The Applicant's submissions through Counsel were filed on 6th May, 2015 and the thrust was as follows as deponed in the pleadings filed by the Applicant.

1. That the grant of letters of administration issued to the Petitioner over the estate of James Kimani Watitu be revoked or annulled.
2. The deceased's property forming part of the estate of James Kimani Watitu was partly from the Applicant's mother Beatrice Wanjiku Nyoike. He obtained his sister's estate absolutely. Those properties formed part of his estate that he then bequeathed to his children the Respondents. The fact is that his late sister Beatrice Wanjiku Nyoike had children and the Applicant is one of them.
3. Their grandmother Zipporah Nyakio Kimani had prior to her death made express wishes that her estate should be given to the children of her late daughter Beatrice Wanjiku to share equally.
4. The evidence of Fredrick Nginya Kimani the only surviving Uncle is that the suit property Ngong/Ngong/902 was bought by their father Wilson Kimani in 1972 and after his death the land was transferred to his widow and two (2) sons in equal shares.
5. The deceased had a dispute with his father over the purchase of the suit property as he claimed to have bought the said land.
6. The deceased fraudulently allocated himself the mother's share of 2.6 acres by having her stamp her thumbprint on the transfer form at a time she was not in good health.

DETERMINATION

The law pertaining to the present matter is as follows:

Section 29 Law of Succession Act Cap 160 stipulates that the beneficiaries and dependants of the deceased include wives and children among others and they are entitled to inherit property from the deceased's estate.

Section 28 Law of Succession Act Cap 160 outlines the requisite considerations the Court should take into account in distribution of the estate of the deceased.

Section 66 Law of Succession Act Cap 160 describes in order of priority those persons that may be appointed as administrators to the deceased's estate.

With regard to the 1st issue, on revocation and/or annulment of grant the Court shall state as follows;

In **Succession Cause 1602 of 2000** the administrator was the deceased widow Zipporah Nyakio Kimani in compliance with **Section 66 of the Law of Succession Act Cap 16**.

In **Succession Cause 48 of 2006** the estate of Beatrice Wanjiku Nyoike alias Beatrice Wanjiku Kimani the administrator is James Watitu Kimani brother to the deceased. In the confirmation of grant certificate of 6th November, 2006, the brother who is now deceased was bequeathed all the deceased's property absolutely. As exhibited by the Applicant's further affidavit of 25th July, 2012 annexed is the affidavit in

support of the summons for confirmation of grant annexed as “**HENI**”

The administrator James Watitu Kimani deponed in paragraph 2 that the deceased was not survived by any children. The truth is the Applicant and his siblings were alive though they lived with their father for a while and then relocated to the U.S.A. Infact it is in record that in 2003, one of the deceased’s sons Kenneth Wilson Kimani Nyoike filed for grant of letters of administration in **Succession Cause 2437 of 2003** and the Court declined as he did not obtain consents of the other siblings.

As regard under **Section 66 of Law of Succession Act Cap 160**, in the absence of living spouse, the children ought to be administrators. Therefore the grant of 6th March, 2006 is annulled and a new grant is issued in the name of the Applicant as the administrator on behalf of the other siblings in the late mother’s estate

With regard to the 2nd issue the children of the deceased Beatrice Wanjiku Nyoike should inherit from their late mother’s estate as provided in **Section 29 of the Law of Succession Act Cap 160**.

Abraham Gitau Watitu (DWII) Francis Mwangi Waititu (DWIII) were of the view that the Applicant and his siblings were left with their father when he divorced their mother and she came and lived at home with their grandparents for a while. The children did not look after their mother instead her family took care of her. Therefore under Kikuyu Customary Law the children should not inherit their mother’s estate.

With respect the Court differs with the adduced argument. The Applicant and siblings are biological children of the deceased Beatrice Wanjiku Nyoike. It is not borne out by evidence that it was by their choice they remained with their father.

The Applicant informed the Court he was shortly thereafter thrown out of the home for secretly visiting her mother the deceased. Surely, at their tender age they could not support their mother.

The Court will not allow that the deeds or misdeeds of the parents to be visited on the children who are innocent in the matter. **Section 29 Law of Succession Act Cap 160** and **Section 35 Law of Succession Act Cap 160** does not qualify who and when the children of the deceased should inherit. As long as one is a child of the deceased old or young, rich or poor educated or illiterate etc in the absence of the circumstance depicted in **Section 28 (e), (f) and (g) Law of Succession Act Cap 160**, one is obliged to inherit property of the estate of their parents.

In the instant case the children of Beatrice Wanjiku Nyoike are entitled to inherit from her estate. According to the confirmed grant of 6th November, 2006 the deceased brother James Watitu Kimani inherited the whole estate absolutely.

Again the Court will not allow the deeds or misdeeds of parents be visited on the children as they had no knowledge and did not participate or know what was going on. The administrator of the estate, Francis Watitu vide the annexures to his affidavit filed on 24th May, 2013 email dated 20th September, 2011 and letter dated 14th June, 2011 marked “**FMW1A and 1B**” through their advocates released documents pertaining to the estate of the deceased Beatrice Wanjiku’s estate to the Applicant as follows;

- a. Plot House No. C 3105 Dandora Orginal certificate of ownership.
- b. Ngong/Ngong/3561 was sold by the administrator to 3rd parties whom the children of the deceased administrator do not know of. Yet they allow the Applicant to recover the same.
- c. Nation Media Group Shares- original share certificate transferred. This is the amount of Ksh.245,092/= not remitted from the sale of 1,000 shares.
- d. Embakasi Ranching Shares – not known or traced
- e. Plot No. 2500 Oljororok Scheme – not known or traced
- f. Plot No. 831 L. R. No. 6845/13 Original Certificate was handed over to the Applicant
- g. Barclays Bank Account – not known/traced(the Applicant attached documents to Barclays Bank Haile Selasie Avenue Branch had about Ksh.150,000/=)

The new administrator the Applicant will carry out the statutory mandate to gather and collect the estate of the deceased as envisaged under **Section 83 Law of Succession Act Cap 160**. The Court notes that Ngong/Ngong 3561 was sold by the late James Watitu to 3rd parties. To ask the Applicant to recover the same is an uphill task. How would the Applicant lay claim on a Purchaser who bought the land for value and is a bonafide purchaser without notice of a defective title? There are proceeds of Nation Shares Ksh.245, 000/= that the same was paid to the deceased administrator With regard to the 3rd issue, the Applicant and siblings s have a legitimate claim to part of the deceased's James Waititu estate for the following reasons;

1. The Applicant's mother Beatrice Wanjiku Nyoike was a daughter to Wilson and Zipporah Waititu Kimani and sister to James Watitu and Fredrick Nginya.
2. The confirmed grant of the estate of Wilson Kimani Watitu dated 29th October, 2001 distributed her estate to the widow Zipporah Nyakio Kimani (2.6 acres) Fredrick Kimani Nginya (2.0 acres) and James Watitu Kimani (2.0 acres) all of Ngong/Ngong/902. Beatrice Wanjiku Kimani ought to have had a share of her father's estate although she died in 1989 and the estate was distributed in 2001 she had children to take her share of the late father's estate.
3. Fredrick Kimani Nginya (PWII) the surviving uncle deponed and testified that during his late mother's lifetime she expressed her wish that upon her demise the 2.6 acres should be distributed to the children of Beatrice Wanjiku Kimani equally 2 acres and 0.6 acres to remain to the family cemetery. She did not write a Will as provided by **Section 11 of the Law of Succession Act Cap 160**. She left an oral Will but under **Section 9 of the Law of Succession Act Cap 160** she ought to have spoken to the two (2) witnesses. During the hearing there was only PWII testimony. Therefore the oral Will does not comply with **Section 9 of Law of Succession Act Cap 160**.
4. Be that as it may in the absence of a Will, oral Will or any documentation, the Court finds that the Applicant and siblings are entitled to their late mother's share of her late father's estate more so that she was divorced and had gone back to her family in Ngong before she moved to Dandora and family to their Harambee estate home.
5. Therefore part of the share of 2.6 acres owned/held by the widow Zipporah Nyakio which was transferred to James Waititu ought to have been shared by Beatrice Nyoike's children as their mother's share of their father's estate
6. From the late mother's estate she had property Land Parcel Ngong/Ngong/3561 which was confirmed as sold by the administrator James Watitu. Consequently the children of the deceased Beatrice Wanjiku Kimani lost the said Land Parcel and ought to be compensated from the estate of James Watitu. To suggest that they ought to pursue 3rd parties is an exercise in futility. The purchasers bought as bonafide purchasers bought for value without knowledge of a defective title. So the proceeds of the sale of Ngong/Ngong/3561 were mingled with the property of the deceased James Watitu existing estate and the Applicants ought to be compensated.

With regard to the final issue, what would be the most equitable distribution of the estate of Wilson Kimani, Zipporah Nyakio Kimani, Beatrice Wanjiku Nyoike and James Waititu to the late children of Beatrice Wanjiku Nyoike and James Watitu.

The Court has taken into account the following factors;

- a. The Applicant and siblings on relocating back in Kenya from the U.S.A admitted they inherited property from the estate of their late father and the issue was infact alluded to by the Respondent. The properties listed in the Respondent's affidavit are not confirmed as existing and all belong to the Applicant and siblings.

They have sufficient property although it is not clear whether the properties obtained by the Respondent were actually identified and distributed to the siblings or if it was shared with a second family of their late father.

- b. The Applicant has been appointed administrator of his late mother's estate and received some documents of ownership of her late mother's property and estate. It is not clear whether most of the properties exist due to the lapse of time and if they are available.

- c. Therefore taking into account the children of James Watitu (deceased) obtained 4 acres of Ngong/Ngong/902 and Fredrick Nginya 2 acres of the same land and Beatrice Nyoike was entitled to benefit from the said estate as provided by **Section 29 of Law of Succession Act Cap 160**, the four (4) children of the deceased herein shall share 3 acres of the 4 acres and the Applicant and siblings shall obtain one (1) acre to share among the 3 siblings to compensate them for Ngong/Ngong/3561 part of the estate of their late mother that the administrator sold to 3rd parties and to obtain their mother's share from her parent's estate.

FINAL ORDERS

1. **The application filed on 19th July, 2011 is allowed in terms of grant of 6th November, 2006 is revoked and annulled. A new grant in the name of the Applicant on behalf of Kenneth Kimani, Judy Nyoike and Jimmy Nyoike is issued.**
2. **The Applicant to exercise statutory mandate as administrator under Section 83 Law of Succession Act Cap 160 and file confirmation of grant of Beatrice Nyoike Kimani within 90 days.**
3. **The objectors, as beneficiaries are allowed to make proposals of distribution if not in agreement.**
4. **The Applicant and siblings are entitled to their late mother's share of the estate of Wilson Kimani specifically Ngong/Ngong/902 one (1) acre to share equally among the three (3) siblings while the four (4) children of James Watitu share three (3) acres. The one (1) acre to be hived off the agricultural land. The rental and residential houses are not to be divided as they are the developed parts of the land.**
5. **The Applicant as administrator to gather and collect the property of mother Beatrice Wanjiku Nyoike/Kimani for distribution for himself and his siblings.**

READ AND SIGNED IN OPEN COURT AT NAIROBI THIS 9TH DAY OF JULY 2015

M. MUIGAI

JUDGE

In the presence of:

Counsel Ms Kiguatha holding brief for the administrator and the Respondents.