



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 2569 OF 2013**

**IN THE MATTER OF MICHAEL CHRISTOPHER WAMALWA**

**ALICE MUTHONI WAMALWA.....APPLICANT**

**VERSUS**

**YVONNE NAMBIA WAMALWA.....RESPONDENT**

**RULING**

1. The deceased MICHAEL CHRISTOPHER WAMALWA was the Vice President of the Republic of Kenya. He died intestate on 23<sup>rd</sup> August 2003. He was survived by the following beneficiaries:-

- a. YVONNE NAMBIA WAMALWA (widow/respondent);
- b. JABALI JACOB RAVID WAMALWA (son);
- c. ALICE MUTHONI WAMALWA (daughter by another lady) (applicant);
- d. WILLIAM SAMUEL WAMALWA (son);
- e. WILLIAM WAMALWA Junior (Son);
- f. MICHELLE WAMALWA (daughter);
- g. DEREK MBOYA (son); and
- h. ESTHER NEKESA (mother).

2. The respondent filed an application dated 11<sup>th</sup> September 2003 for letters of administration *ad colligenda bona* which was granted. On 18<sup>th</sup> February 2005 the grant was rectified to include the applicant as co-grantee.

3. On 30<sup>th</sup> April 2012 the applicant applied to, among other things, have the respondent compelled to account for the Kshs.36,578,179/50 that had been received as the deceased's gratuity; she be compelled to account for the Kshs.3.4 million that was found in the deceased's briefcase at the time of his death and which money had been deposited with the firm of Khaminwa & Khaminwa Advocates; she accounts for monies that she had received from the deceased's pension on behalf of WILLIAM WAMALWA and WILLIAM WAMALWA Junior; and that she and her advocates be ordered to account for all the monies secured and paid and all assets and liabilities comprising the estate of the deceased from the time of his death to date. The applicant further sought that she and WILLIAM WAMALWA be allowed to petition

for the grant of letters of administration of the estate of the deceased. The application was defended and heard, following which it was ordered that within 45 days the respondent does file in court a statement giving a full account of monies received by her on the account of the estate of the deceased including the sum of Kshs.36,578,179/50 paid out as gratuity and also the cash amounting to Kshs.3.4 million and in addition money received by her on behalf of SAMUEL WAMALWA and WILLIAM WAMALWA Junior as gratuity, and the proceeds of sale of the maize harvest on the 300 acres. She was ordered to file a full account of all the monies received by her on behalf of the estate, an inventory of all the payments made by her from such monies and evidence of such payments and the balance thereof; to file a list of all the properties acquired through funds from the estate as well as a list of all the properties constituting the estate of the deceased; and to file a statement of account showing how the sum of Kshs.10 million remitted to Khaminwa & Khaminwa Advocates to pay the debts of the deceased had been utilized. Lastly, the Court ordered that the applicant and the respondent and/or any other beneficiaries of the estate do file a petition within 60 days for a full grant failing which the Public Trustee shall be required to administer the estate.

4. The Court observed that although the respondent had been issued a grant of letters of administration *ad colligenda bona* she had failed to petition for a full grant and what she had done amounted to the distribution of the estate without such full grant. Let me reiterate that under **section 55(1) of the Law of Succession Act (Cap. 160):-**

**“No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets constituting a net estate, or to make any division of property, unless and until the grant has been confirmed as provided by section 71.”**

5. In the case of **MORJARIA V ABDALLA [1984] KLR 490** it was held that:-

**“5. The purpose of a grant of letters of administration *ad colligenda bona* is to collect the property of the deceased person where it is of perishable nature, and where regular probate administration cannot be granted at once.”**

In **RAJESH PRANJIVAN CHUDASAMA .V. SAILESH PRANJIVAN CHUDASAMA, Civil Appeal No. 30 of 2013** at Mombasa it was observed that the import and gambit of a *grant ad colligenda bona* is that such grant is:-

**“limited for the purpose only of collecting and getting in and receiving the estate and doing such acts as may be necessary for the preservation of the estate and until a further grant is made.”**

6. The applicant filed the present application dated 25<sup>th</sup> June 2013 under **sections 83 and 86** of the Act seeking that the Court orders the Director of Pensions to withhold the respondent’s share of the Dependant’s Pension/Widows & Children’s Pension pending the hearing and determination of this Cause and that summons do issue to the respondent to show cause why she has failed to comply with the orders made on 25<sup>th</sup> April 2012 asking her to account. The application was premised on the ground that the respondent had failed to comply with the Court order and yet the Director of Pensions was preparing to make the payment indicated above.

7. The respondent swore replying affidavits dated 16<sup>th</sup> July 2014 and 22<sup>nd</sup> December 2014 in which she sought to account for the monies and to comply with the order subject of the application.

8. The order that was made on 25<sup>th</sup> April 2012 directed that there be an account within 45 days. It is clear that no action was taken within those days to make account, and there was no extension of time that was sought, or granted. It is for this reason that I allow the application and issue summons for the personal attendance of the respondent on a date that the parties will agree on for her to explain the reasons for the non compliance. In the meantime, the Director of Pensions shall not make any payment to the respondent, or to the estate, in respect of the deceased.

9. I am persuaded to take these drastic steps because the estate of the deceased is being shared and/or wasted when there is no full grant applied for, or granted.

10. Lastly, I direct the Public Trustee to take over forthwith and manage the estate of the deceased MICHAEL CHRISTOPHER WAMALWA.

**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**