



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**(Coram: Odunga, J)**

**SUCCESSION CAUSE NO. 142 OF 1993**

**IN THE MATTER OF THE ESTATE OF JONATHAN NZIOKA MUIYA (DECEASED)**

**ANNA N. NZIOKA**

**MUISYO NZIOKA**

**WALTER NZIOKA**

**ESTHER OBED.....ADMINISTRATOR/ RESPONDENTS**

**-VERSUS-**

**WAMBUA NZIOKA**

**ROSE MUKULU NZIOKA.....APPLICANTS**

**RULING**

1. By a Chamber Summons dated 18<sup>th</sup> November, 2015 taken out by the Applicants herein, the said applicants seek an order that the Grant of Letters of Administration issued to **Anna N. Nzioka, Mutiso Nzioka, Walter Nzioka** and **Esther Obidi** on 17<sup>th</sup> May, 1994 and confirmed on 7<sup>th</sup> April, 2008 be revoked and that a fresh Grant be issued to **Wambua Nzioka** and **Rose Mukulu Nzioka**, the applicants herein.

**Applicants' Case**

2. In support of the said application the 1<sup>st</sup> applicant swore an affidavit in which he averred that the applicants are son and daughter of the deceased **Jonathan Nzioka Muiya** who died on 11<sup>th</sup> July, 1991, respectively. The said deceased had two wives, the first Respondent (**Anna N. Nzioka-Deceased**) being the first wife and **Katithi Nzioka** (now deceased) being his second wife. It was deposed that the said **Anna N. Nzioka** is the mother of **Muisyo Nzioka** and **Walter Nzioka** (the second and third Respondents herein), whereas the said **Katithi Nzioka** is the mother of the applicants among other children. The fourth Respondent (**Esther Obed - Deceased**) is the deceased's daughter-in-law.

3. According to the applicants, though the Respondents herein are aware of the deceased's second wife, and to whom both the applicants and their other siblings are well known, filed the petition herein without the applicants' knowledge and consent and without involving them and deliberately failed to disclose to this Court that the deceased is survived by a second wife and children. It was therefore the applicants' case that the Respondents herein have deliberately made false statements in the proceedings herein, and have concealed material facts from this Court, and have fraudulently obtained the confirmed grant herein.

4. It was further averred that following the death of the first and the fourth Respondents herein, the grant of letters issued herein has become useless and inoperative. They were therefore apprehensive that the Respondents may dispose of the properties listed in the schedule of distribution and thereby disinherit the applicants and their other siblings who are rightful beneficiaries of the estate now that they have petitioned for letters of administration in respect of the estate of the 1<sup>st</sup> Respondent vide Succession Cause No. 218 of 2011.

5. The applicants prayed that a fresh grant should issue to them since the Respondents cannot be trusted with administration of the deceased's estate, in view of the foregoing.

6. The Application was prosecuted by way of viva voce evidence, ad in support of their case, the applicants called the 1<sup>st</sup> Applicant, **Wambua Nzioka**, as their first witness (AW1). He relied on the supporting affidavit and the documents annexed to the said affidavit. According to him, he has known his step brothers since 1970 and that by the time they left them in Kangundo they were still very young save for Obed. According to him, he was staying in Tana Ranch, Masinga in his father's land where his mother was buried.
7. According to him, in 1994 they sat down as a family at after the death of their father in 1991. The said meeting took place at Obed's place and present were **Walter** and **Muisyo**. According to him, **Walter** wanted to go to Yatta though **Walter** and himself had been given plots in Kangundo. He disclosed that the Yatta plot is No. 34 while the Kangundo ones are Nos. 34 and 35.
8. He reiterated that they were never informed that these proceedings were being instituted and he became aware of the same in 2015. He stated that since the clan decision as to how they should stay they never had any problem till the death of their father. He stated that he was in court to bring an end to the problem he had with **Walter** whom he knew very well.
9. In cross-examination, he stated that his father died in 1991 and they had a clan meeting on 10<sup>th</sup> September, 1994 and he was unaware of these proceedings. According to him, his problem is that **Walter** is interfering with him in plot no. Matungulu farmers No. 34. He was unaware that that her mother's property was the subject of these proceedings. According to him the Kangundo plots are nos. 34 and 35 though they do not appear in the Grant but he could be mistaken about the numbering. It was his evidence that due to difference between their mothers, they were moved from Kangundo to Yatta. He however knew **Walter** when their father was still alive. However, when **Walter** went to the disputed land, he found him there. While he did not know when his mother got married to their father, it was his evidence that dowry was paid and insisted that the two were together till the father's death and that they never separated otherwise she would not have been buried on his land in Masinga.
10. He however stated that the disputed land is in Kangundo while the mother was buried in the Yatta/Matungulu Plot 34 where both himself and the mother stayed and which was in his name having been in the name of the deceased before. He admitted that the transfer was not pursuant to a court order but the clan's decision but he did not know the acreage but he estimated it to be 105 acres. According to him they were relocated to Yatta in 1971. Referred to the clan meeting minutes he confirmed that the signatures of **Walter** and Obed or their mother were not there though Obed's name was there. It was his case that he was seeking one plot at Kwa Patel but did not know the number.
11. In re-examination he reiterated that he knew **Walter** before their father passed away. He however explained that though he was staying on the Matungulu property, he was not sure if it was registered in his name. He stated that the Respondents declined to sign the agreement because they wanted the whole property. It was his position that before the death of **Walter's** mother they had no problem and as far as he was concerned the Kangundo Plot was in his father's name unless the same had been transferred.
12. The applicants called **Paul Musyimi Mwangangi** as their 2<sup>nd</sup> witness. He relied on his witness statement as part of his evidence in which he stated that stated he was from Ininga Location, Matetani sub- location in Kangundo sub- County within Machakos County. According to him, **Jonathan Nzioka Muiya** (the deceased herein) was his cousin since the deceased's father was a brother to his father. Before his death, the deceased was a retired Divisional Officer (D.O) who had worked as such at Makueni, Yatta and Malindi. It was his evidence that the deceased had two wives namely **Anna Ndondu** and **Katithi Nzioka** (both deceased) but who were both known to him. The second wife **Katithi Nzioka** died before the deceased herein.
13. According to the witness, the deceased had a total of eleven (11) children; seven (7) from the first house and four (4) from the second house. On 10<sup>th</sup> September, 1994, after the death of the deceased on 11<sup>th</sup> July, 1991, a family committee through the Amuuti clan sub- divided the properties of the deceased among the two houses. The first house retained majority of the properties while the other house was given a parcel of land at Masinga where the second wife was staying and where she was buried and two other plots at Kangundo town. According to him, during the said sub-division, both houses were represented whereupon; the 1<sup>st</sup> house was represented by **Ann Ndondu** (1<sup>st</sup> Wife-now deceased) and her sons namely **Walter** and **Obed**, while the 2<sup>nd</sup> house was represented by the 1<sup>st</sup> applicant herein, **Wambua Nzioka**. However, during the said sub – division, the 1<sup>st</sup> house did not disclose that they had filed the succession matter herein and this fact was only disclosed sometimes in the year 2015, after the 2<sup>nd</sup> house started claiming the two plots which had been given to them. The sons of the 1<sup>st</sup> house then started alleging that they didn't know the applicants herein and are not aware that their father had another wife.
14. The witness however averred that the children from the 1<sup>st</sup> house cannot purport to say that they don't know the applicants herein since both families know each other and they were present at the said meeting. According to him, the second wife stayed and was buried in the deceased parcel of land at Masinga and the applicants are legitimate beneficiaries of the estate of the deceased. It was therefore his case that it is in the interest of justice that the applicants herein together with their siblings be considered for they are true beneficiaries of the estate of the deceased.
15. In cross-examination, the witness stated that he knew the deceased since the deceased was a chief and was his cousin. According to him, Anne was married by the deceased before he was born hence the deceased could be the age mate of his father. However, at the time **Katithi** was married he was young and did not witness the marriage ceremonies between them. When she went to stay in Masinga, the witness was working but before then **Katithi** was operating a shop at Kangundo. Though he never saw her homestead at Kangundo, she was taking care of the deceased's cattle in Masinga. While she was operating the shop, the witness did not know where **Katithi** and the deceased were staying. It was his evidence that the business was opened for Obed and not **Wambua** and he was not aware if the deceased ever brought the two families together though he insisted that Anne and **Katithi** were the deceased's wives and **Katithi** was present at the deceased's funeral though he admitted that he did not attend the funeral. He could not therefore state whether **Wambua** attended the funeral.
16. In re-examination, the witness stated that **Katithi** was staying at Kangundo before relocating to Masinga where she was selling milk from a rental house. According to him **Katithi** was married in accordance with Kamba Customs and that the clan sat down and distributed the deceased's properties in the presence of everybody. According to him, the Masinga property belonged to the deceased and the clan gave it to **Katithi**. It was his evidence that he had no problem with any of the deceased's children but stated that the deceased was buried in the 1<sup>st</sup> wife's home in Kangundo while **Katithi** was buried in Masinga. While he could not recall seeing the 1<sup>st</sup> applicant and his siblings at the

funeral he insisted that the 1<sup>st</sup> applicant was the deceased's son.

17. The applicants called **Makau Munyao**, who testified as AW3 and similarly relied on his statement. According to his statement, he was a farmer and a divisional chairman of Amuuti clan, a position he had held for eight years and before then, he was a Locational Chairman of the said clan. It was his statement that the deceased herein, **Jonathan Nzioka Muiya**, was well known to him before the deceased's death since the deceased was from the same clan of which he was a chairman. According to him, the deceased herein was a retired Divisional Officer (D.O) and had worked as such at Makueni, Yatta and Malindi. He had two wives before his death namely **Anna Ndondu** and **Katithi Nzioka** (both deceased). The second wife (**Katithi**) had four children and stayed at the deceased parcel of Land at Masinga while **Ndondu** (the 1<sup>st</sup> Wife) was staying at Kangundo.

18. After the death of the deceased and the second wife (**Katithi**), the 1<sup>st</sup> house wanted to disinherit the second house and as a result, the Amuuti clan together with the family members settled the issues between the two houses whereupon the properties were sub-divided amongst the two houses at a clan meeting held on 10<sup>th</sup> September, 1994. During the meeting, he was the acting secretary and the 1<sup>st</sup> house was given majority of the deceased's properties whilst the 2<sup>nd</sup> house was given the land parcel at Masinga where their mother was staying and where she was buried and two other plots at Kangundo. At the said meeting, the 1<sup>st</sup> house which was represented by **Ndondu** (1<sup>st</sup> wife) and her two son's **Obed** and **Walter** but they never disclosed during the clan/family meeting that they had filed a succession cause in court in respect of the deceased, which is shown to have been filed in court in the year 1993, before the clan meeting was held.

19. After the clan/family meeting as aforesaid, the two houses had no issues until sometimes in the year 2015 after the second house started claiming the two plots which had been allocated to them alleging that they didn't know that their father had another wife. It was again at this point, they disclosed that there was a succession cause in court.

20. According to the witness, the applicants herein are beneficiaries to the estate herein which fact is well known by the children of the 1<sup>st</sup> house and therefore the applicants and their siblings they should not be disinherited.

21. In his oral evidence he added that the clan distributed the properties amongst the two wives in accordance with the Kamba Customs. However, the resolutions of the clan were ignored by the 1<sup>st</sup> wife's children. The said meeting was chaired by the General Chairman of the clan, **Daniel Nduku**.

22. In cross-examination, the witness stated that the cause of the dispute was that **Walter**'s siblings were claiming that the 1<sup>st</sup> applicant's siblings were not the children of the deceased. But before they could resolve the dispute, **Walter**'s brothers informed them that he had a document from court and that they were in the process of distributing the properties when they were stopped. The witness however did not attend the marriage ceremony but he was present at the funeral of the deceased by which time the 1<sup>st</sup> applicant was still young and he did not notice his presence.

23. In re-examination, he explained that they had three meetings. In 1993, he was called alone and in 1994 when they distributed the properties. The third one was in 2015 at the DC's office. They were however informed of the succession proceedings in 1994 but were not shown the documents till 2015. According to him, **Katithi** was buried where the deceased, her husband, had purchased property. While he did not attend **Katithi**'s marriage ceremony he said that he saw the goats being taken. According to him, a woman buried in a man's land is his wife. It was his evidence that the 1<sup>st</sup> applicant was young while the other siblings were old. At the meeting, **Walter** did not talk and it was Obed who stated that **Wambua** was not the deceased's son. Similarly, Anna did not say anything.

### **Respondents' Case**

24. On the part of the Respondents, they relied on the replying affidavit sworn by **Walter Muia Nzioka**, the 3<sup>rd</sup> Respondent herein on 2<sup>nd</sup> April, 2016. According to him, the Applicant's in these proceedings are not their step brother and sister as alleged and they are complete strangers. He deposed that their late father passed on in 1991 which is over 25 years ago and he never met them either before his father's death or after but only met them just before this Application was filed. Accordingly, the applicants are not beneficiaries to the estate of the deceased herein.

25. According to him, his family was not aware that his father had another wife named **Katithi Nzioka** and if they existed they should have gotten in touch with the family after the father passed on. He disclosed that the Applicants became known to them in November 2015 when they appeared and introduced themselves claiming to their siblings and demanding a share of the Deceased's property. The deponent found this strange and they called a family meeting on the 21<sup>st</sup> October, 2015 to deliberate on the issue and it was decided that the family could not grant the applicants' wishes since there was already a grant and the Applicants' should follow the law.

26. The Respondents' position was that no material facts were concealed and based on legal advice, believed that upon death of one or more of the Administrators to whom grant has been issued, all the powers and duties of Administrators become vested in the surviving Administrators.

27. Since a grant can only be revoked on the grounds enumerated under section 76 of the **Law of Succession Act**, it was their position and the grounds relied upon must be proved and the applicants have not met the threshold envisaged by the said sections since the Applicants have not even explained why if indeed they were beneficiaries of the Estate, why they never took steps to acquire grant or why they never came forward in the last 25 years.

28. It was averred that this matter was closed and the grant confirmed by this Court 8 years ago and the beneficiaries were therefore at liberty to distribute the property as they desired. It was confirmed that the 1<sup>st</sup> Petitioner passed on and her Estate is the subject of Succession Cause No. 218"b" of 2012. Accordingly, they prayed that the Applicants' Application be dismissed with costs.

29. In his oral evidence, he reiterated the foregoing and added that the deceased was his father and his mother was Anna Nzioka who is deceased. **Musya Nzioka** is his sister while **Esther Obed** was his brother's wife.

30. According to him he saw the Applicant's witnesses when they went to the DO's office but he had never seen them before. He denied that he signed the document which was relied upon by them as his name did not appear in the said document since he was not in the meeting. According to him the and as far as he was concerned the deceased's assets were still in her name and which is the subject of succession cause no. 218 of 2012. He therefore asserted that the deceased's estate has no properties since all of them had been transferred to their late mother's Grant was issued to his late mother.

31. In cross-examination he stated that he belonged to Ammuti clan and confirmed that he saw clan elders in court. According to him Obed is still alive and only his wife is deceased. he admitted that the property at Tana Ranch was transferred when the deceased died and his mother took the succession. According to him, he did not deny that **Katithi** was buried there and since he was there a long time ago, he could not tell whether **Katithi** and **Wambua** stay on that land. He however admitted that no action had been taken to evict them from that land.

32. It was his evidence that in 2015 they informed the applicants that they had petitioned for Grant and that they should seek their entitlements in Court. According to him, **Muisya Nzioka**, his brother is still alive but had not filed any statement in the case. He however denied that only him objects to the applicants' claim. However, **Obed** was not around when they petitioned for grant. He however stated that none of them had been given any property of the deceased. He admitted that his father was a District Officer in Yatta and that he bought Tana Ranch while he was there and that his mother had a home and cattle there. He however claimed that the applicants got the ranch without their knowledge after the death of their father though they did not sue them since they came to know about it late, in 2015 when the applicants went to claim their plots for the first time.

33. In re-examination he stated that none of their family members signed the said minutes of the clan. He reiterated that by the time of the clan meeting, they had already petitioned for Grant.

### **Determination**

34. I have considered the evidence on record as well as the submissions filed. The application is seeking to have the Grant issued herein revoked on the ground that the applicants though beneficiaries to the estate of the deceased had no knowledge of the institution of these proceedings and their consent was never sought.

35. Section 76(a), (b) and (c) of the **Law of Succession Act** provides as hereunder:

**A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—**

**(a) that the proceedings to obtain the grant were defective in substance;**

**(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;**

**(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;**

36. In this case, the applicant's case is that they are son and daughter of the deceased from the deceased's second wife while the Respondents were/are from the 1<sup>st</sup> house. In support of their claim they called the Chairperson of the Amuuti Clan to which it was admitted by both parties that the deceased belonged. They also called the deceased's cousin. Both the witnesses were present at the clan meeting at which the clan heard the dispute between the two families and were in the process of resolving the same when they were informed that the matter was pending before this Court. Although the 3<sup>rd</sup> Respondent initially denied that he did not know the two witnesses, he later admitted in cross examination that he knew them as clan elders.

37. The two witnesses were categorical that the applicants' mother was the second wife of the deceased. It was contended, a contention which the 3<sup>rd</sup> Respondent did not deny that the applicants and their mother were in occupation of the deceased's Yatta land and the 3<sup>rd</sup> Respondent admitted that no attempt had been made to evict them therefrom. In fact, there was evidence that the applicants' mother was buried thereat.

38. On his part, the 3<sup>rd</sup> Respondent was the only witness in support of his case. Though he admitted that some of his brothers particularly Obed the husband of the 4<sup>th</sup> Respondent who is deceased is still alive, he never bothered to call him to corroborate his case.

39. Having considered the evidence placed before me the balance of probabilities tilt in favour of the applicants' claim that their mother was a wife to the deceased. There is no explanation as to why the Respondents, being the administrators of the estate of the deceased did not make any attempt to evict the applicants and their mother and why the applicants' mother was buried on a property belonging to the deceased herein. These facts go to show that the applicants' mother was related to the deceased herein.

40. Accordingly, I find that the applicant's mother was the second wife of the deceased herein and her children are beneficiaries to the estate of the deceased.

41. The applicants claim that they were never informed when the Petition for Grant was made and were not aware of the same. Their position

is supported by the 3<sup>rd</sup> Respondent/Administrator who contends that the applicant were not the children of the deceased. Section 51 of the *Law of Succession Act* provides as follows:

- (1) An application for a grant of representation shall be made in such form as may be prescribed, signed by the applicant and witnessed in the prescribed manner.
- (2) An application shall include information as to-
  - (a) the full names of the deceased;
  - (b) the date and place of his death;
  - (c) his last known place of residence;
  - (d) the relationship (if any) of the applicant to the deceased;
  - (e) whether or not the deceased left a valid will;
  - (f) the present addresses of any executors appointed by any such valid will;
  - (g) in cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased;
  - (h) a full inventory of all the assets and liabilities of the deceased; and
  - (i) such other matters as may be prescribed.

42. Section 66 of the *Law of Succession Act*, Cap 160, Laws of Kenya provides that:

**When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—**

- a. surviving spouse or spouses, with or without association of other beneficiaries;
- b. other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

43. Under Part V of the Act, the children of a deceased person rank equally. In this case, based on my finding above, the Applicants and the 3<sup>rd</sup> Respondent are the children of the deceased. Accordingly, there is no superior right to a grant as between the three. Therefore, in seeking to petition for Grant, the Respondents ought to have sought the applicants' consent or cited them before doing so.

44. Part VI Rule 26(1) of the *Probate and Administration Rules* provides that:

**Letters of administration shall not be granted to any applicant without notice of every other person entitled in the same degree as or in priority to the applicant.**

45. Therefore, what the law requires is that a notification be given to every person entitled in the same degree as or in priority to the applicant. Rule 22(1) of the *Probate and Administration Rules* (hereinafter referred to as "the Rules") however provides that:

**A citation may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.**

46. A citation, it was held in the Estate of Sheikh Fazal Ilahi [1957] EA 697 in which the Court relied on *Henderson on Testamentary Succession (4<sup>th</sup> Edn)*, is an instrument issued by the court, citing persons to come in and show cause why a grant should not issue to a particular person. It was therefore held in Maamun Bin Rashid Bin Salim El-Ruhmy vs. Haider Mohamed Bin Rashid El-Basamy [1963] EA 438 that:

**“Where a person claiming to be an heir (or the heir of an heir) of a deceased person applies for a grant of administration, citations should not be issued to other heirs whose existence is disclosed in the petition having an equal right as a matter of course but only when for some special reason the court sees fit to make such an order. The object of a non-contentious citation is to call upon a person who has a superior right to a grant to take the grant. Thus any person who is interested in having an estate administered may apply for a grant of representation, but if there are persons who have a superior right to obtain the grant, he must cite such persons calling upon them to apply for the grant. If the person cited fails to apply for a grant or renounce their right to it, the grant may, subject to the usual conditions, be given to the *citor*. It follows that, save in cases where the court thinks it necessary to do so; non-contentious citations should not be issued unless the petition discloses**

that the person seeking the grant has a lesser right than some other person who has failed to take the necessary steps to obtain it... If on the other hand the person cited concedes that the person who has applied has a right to the grant but contends that he has a superior right, then, the proper course for him to adopt (after he has been served with citation) is to enter appearance to the citation and himself apply for a grant to be made to him if he so wishes. If the person cited enters appearance but takes no further step, the *citor* may apply on summons for an order that the person cited to take the grant within a stated time and in the event of the latter neglecting to do so, the grant will be ordered to be made to the *citor*...The only issue before the court in a cause brought as a result of a caveat being entered is whether or not the person who has applied for the grant is entitled to it and there is no issue as to whether he or some other person has a better right to the grant." [Emphasis supplied].

47. It was therefore held by **Kneller, J** (as he then was) in **Kiboko vs. Assistant Land Registrar and Others [1973] EA 290** that:

**"Citations need not be ordered to issue to all persons shown as heirs in the petition of the deceased for a grant of letters of administration of the estate. They need not be ordered as a matter of course to issue for heirs shown in the petition to have an equal right. They should go forth to anyone shown to have a superior right to take up the grant or for any other special reason."**

48. It is therefore clear that unless the Court thinks otherwise, the Citor must be a person who is himself entitled to a grant, in the event that a person with a superior right fails to take up the grant or for any other special reason. Where two or more persons have equal rights to grant of representation, there is no necessity for a citation to be made unless when for some special reason the court sees fit to make such an order. In those circumstances, one of them is at liberty to apply for grant and the Court may in its discretion join the other persons if it deems fit.

49. Apart from bare averments, there is however no evidence that the Applicants were notified as required in Part VI Rule 26(1) of the ***Probate and Administration Rules*** despite the fact that they rank in priority with the 3<sup>rd</sup> Respondent but rank higher than the 4<sup>th</sup> Respondent. In her replying affidavit, the 3<sup>rd</sup> Respondent's reason for not doing so is that the applicants were not children of the deceased. I have found no merit in that position. That the deceased's properties were transferred to the 1<sup>st</sup> Respondent is neither here nor there since such transfer may well be in trust for the other beneficiaries including the applicants herein. That however is a matter for distribution of the estate.

50. I agree with the holding in the case of **Monica Adhiambo vs. Maurice Odero Koko [2016] eKLR** in which the court stated as follows:

**"... a closer look at the process she took in applying for the said grant of letters of administration reveal that the said grant was obtained through fraudulent non-disclosure of material facts...None of these two beneficiaries had given the petitioner consent in terms of Rule 7(7) (a) (b) and (c) of the Probate and Administration Rules...The petitioner in the instant case did not rank higher than the objector in priority in seeking a grant of administration intestate and was required before making of the grant to furnish this court with information and satisfy the court that the objectors having prior preferences to a grant being all children of the deceased, had renounced their right generally to apply for the grant or had consented with making of the grant to the petitioner or that they had been issued with a citation calling upon them either to renounce such right or to apply for a grant. The petitioner therefore acted in contrary to the mandatory provisions of Rule 7(7) of the Probate and Administration Rules and it's no wonder my sister Sitati J had to revoke the petitioner's grant for non-disclosure of material facts...With that said, the fact that the petitioners title over the original suit land was revoked will automatically affect the interested parties ownership over the suit property because it will be a corruption of the law to validate how the original suit property belonging to the deceased was transferred to the petitioner. The fact remains that the petitioner stole a march over the other beneficiaries who were also to benefit on equal status on the property of the deceased and it would be unfair to validate the illegal actions of the petitioner by invoking Section 93 of the Law of Succession Act. The reality of the situation is that provisions of Section 93 do not validate unlawful acts and what was intended by Section 93 was where a grant is properly and lawful issued then, Section 93 can come to the rescue of such a purchaser. In my humble view the underlying objective of the law of Succession Act is to ensure that beneficiaries of deceased persons inherit the property."**

51. In the premises, I am satisfied that the proceedings to obtain the grant were defective in substance. Accordingly, the Grant of Letters of Administration issued to **Anna N. Nzioka, Mutiso Nzioka, Walter Nzioka and Esther Obidi** on 17<sup>th</sup> May, 1994 and confirmed on 7<sup>th</sup> April, 2008 is hereby annulled and/or revoked on the grounds of material non-disclosure and on the ground that the said grant has become inoperative.

52. I hereby appoint **Obed Nzioka and Wambua Nzioka** as the joint administrators of the Estate of the deceased herein and direct that a fresh grant be issued to that effect. I further direct that this cause be referred to a court appointed mediator to assist the parties in an amicable distribution of the estate.

53. As this dispute pits members of the same family, there will be no order as to costs. It is so ordered.

**Ruling read, signed and delivered in open Court at Machakos this 14<sup>th</sup> day of January, 2021.**

**G. V. ODUNGA**

**JUDGE**

**In the presence of:**

**Mr Mutinda for Mr Mwalimu for the Applicant**

