

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1976 OF 1996

IN THE MATTER OF THE ESTATE OF GODFREY NDEGWA KARIUKI (DECEASED)

JOHN KINUTHIA NDEGWA.....APPLICANT

VERSUS

DANSON KIRIKA NDEGWA.....RESPONDENT

RULING

1. The deceased Godfrey Ndegwa Kariuki died intestate on 5th June 1995. On 16th September 1996 his sons Peter Kaniu alias Ndegwa Kariuki and Danson Kirika Ndegwa petitioned for the grant of letters of administration intestate. The grant was issued on 31st December 1996. The grant was confirmed on 30th June 1998, and the estate distributed. On 19th October 2010 a fresh grant was issued jointly to Peter Kaniu Ndegwa, John Kinuthia Ndegwa (the applicant), Danson Kirika Ndegwa (the respondent) and Jane Wanjiku Ndegwa. This followed an order on 19th October 2010 by the court in **HCCC No. 76 of 1996 (OS)**.

2. There is an outstanding application dated 12th April 2011 by John Kinuthia Ndegwa and Jane Wanjiku Ndegwa against Peter Kaniu Ndegwa and Danson Kirika Ndegwa for the revocation of the grant issued on 19th October 2010 and the redistribution of the estate of the deceased. On 31st January 2014 Justice W.M. Musyoka observed that:-

“9. The journey to the resolution of the issues starts with the disposal of the revocation application. The determination of that application will decide the fate of the certificate of confirmation (of) grant dated 30th June 1998.

10. Pending the determination of the said application *status quo* ought to be maintained, otherwise the said application will be rendered nugatory.”

3. The Judge then ordered that the application dated 12th April 2011 be heard on priority basis.

4. Instead of the parties taking date for the hearing and disposal of that application, they have made several applications. On 13th June 2018 parties appeared before me, and without bringing to my attention what Justice W.M. Musyoka had directed, consented to the issuance of a fresh grant by removing Peter Kamau Ndegwa and John Kinuthia Ndegwa and leaving Jane Wanjiku Ndegwa and Danson Kirika Ndegwa. I find that this consent was obtained by non-disclosure to the court of the orders by Justice W.M. Musyoka. On my own motion, and bearing in mind the provisions of **section 47** of the **Law of Succession Act** and **rule 73** of the **Probate Rules**, I review and set aside the orders of 13th June 2018, and revoke the grant issued on that day. The grant shall remain the one issued on 19th October 2010, the administrators being Peter Kaniu Ndegwa, Danson Kirika Ndegwa, Jane Wanjiku Ndegwa and John Kinuthia Ndegwa.

5. Consequently, the application dated 4th June 2020 by John Kinuthia Ndegwa against Danson Kirika Ndegwa is hereby adjourned, as are all other pending applications, to allow for the hearing and determination of the application dated 12th April 2011, which the court had asked on 6th March 2017 that it be heard orally.

6. I direct that the application dated 12th April 2011 be heard on **10th May 2021**.

DATED and DELIVERED NAIROBI this 15TH day of FEBRUARY 2021.

A.O. MUCHELULE

JUDGE