



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1553 OF 2011**

**IN THE MATTER OF THE ESTATE OF WANJIRU KIMARI (DECEASED)**

FAITH WANJIRU KIMARI.....1<sup>ST</sup> APPLICANT

STEPHEN NJOROGE KIMARI..... 2<sup>ND</sup> APPLICANT

MARTHAR WANGUI KIMARI.....3<sup>RD</sup> APPLICANT

FRANCIS MATHANJI KIMARI ..... 4<sup>TH</sup> APPLICANT

MARY NDUTA KIMARI..... 5<sup>TH</sup> APPLICANT

MICHAEL MBUGUA KIMARI..... 6<sup>TH</sup> APPLICANT

**V E R S U S**

HANNAH MUKAMI.....1<sup>ST</sup> RESPONDENT

MILLY MUKAMI.....2<sup>ND</sup> RESPONDENT

ELIUD MWANGI MACHARIA.....3<sup>RD</sup> RESPONDENT

NAIROBI CITY COUNTY GOVERNMENT.....4<sup>TH</sup> RESPONDENT

**JUDGMENT**

(1) Before this Court for determination is the Summons for Revocation of Grant dated **8<sup>th</sup> March 2016** by which-

- FAITH WANJIRU KIMARI – 1<sup>ST</sup> APPLICANT
- STEPHEN NJOROGE KIMARI – 2<sup>ND</sup> APPLICANT
- MARTHAR WANGUI KIMARI - 3<sup>RD</sup> APPLICANT
- FRANCIS MATHINJI KIMARI – 4<sup>TH</sup> APPLICANT
- MARY NDUTA KIMARI – 5<sup>TH</sup> APPLICANT
- MICHAEL MBUGUA KIMARI – 6<sup>TH</sup> APPLICANT

have all approached the Court for the following orders:-

**“(1) THAT the Grant of Letters of Administration issued to HANNAH MUKAMI and MILLY MUKAMI**

on 7<sup>th</sup> February 2012 and confirmed on 29<sup>th</sup> day of April 2013 be revoked.

(2) THAT the costs of this application be provided for.”

(2) The Summons was premised upon the grounds on the face of the Summons and was supported by the Affidavit of even date sworn by **FAITH WANJIRU KIMARI** (the 1<sup>st</sup> Applicant herein).

(3) The Summons for Revocation of Grant was opposed by the Respondents **HANNAH MUKAMI** (the 1<sup>st</sup> Respondent) and **MILLY MUKAMI** (the 2<sup>nd</sup> Respondent) filed a Replying Affidavit dated **4<sup>th</sup> November 2019** whilst **ELIUD MWANGI MACHARIA** (the 3<sup>rd</sup> Respondent) filed his Reply dated **28<sup>th</sup> March 2019**. The 4<sup>th</sup> Respondent being **NAIROBI CITY COUNTY GOVERNMENT** did not file any reply to the Summons.

(4) The Summons was canvassed by way of written submissions. The 1<sup>st</sup> to 6<sup>th</sup> Applicants filed their written submissions dated **8<sup>th</sup> February 2019**. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed written submissions dated **17<sup>th</sup> February 2021** whilst the 3<sup>rd</sup> Respondent also filed written submissions dated **17<sup>th</sup> February 2021**. As stated earlier the 4<sup>th</sup> Respondents did not participate in these proceedings.

(5) This matter revolves around the estate of **WANJIRU KIMARI** (hereinafter the ‘**Deceased**’) who passed away on intestate on **14<sup>th</sup> August 1985**. The Deceased was survived by two (2) children namely **HANNAH MUKAMI**, the 1<sup>st</sup> Respondent (hereinafter the ‘Administrator’) and one **STEPHEN KIMARI**. The said **STEPHEN KIMARI** had pre-deceased his mother as he passed away in the year **1982**, leaving behind **six (6)** children. The Applicants claim to be the children of the late **STEPHEN KIMARI** and therefore beneficiaries of his estate.

(6) I have considered the Summons before me as well as the Affidavits relied upon by the parties. The Applicants herein seek to revoke the Grant issued to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in respect of the estate of the late **WANJIRU KIMARI**. The Applicants claim to be the beneficiaries of the estate of one **STEPHEN KIMARI** who was a son to the late **WANJIRU KIMARI**.

(7) However there exists no document on record to prove that the Applicants are the personal representatives of the estate of the late **STEPHEN KIMARI**. The Applicants have not annexed a Grant of Letters of Administration issued to themselves in respect of the Estate of **STEPHEN KIMARI**. They have only exhibited a letter from the **Assistant Chief, Huruma Sub-Location (Anenxture ‘FWK ‘2’)** to the Replying Affidavit dated **18<sup>th</sup> March 2016**) which letter **does not** grant them ‘**locus standi**’ in this matter. The Applicants did not even bother to apply for Grant of Letters of Administration Ad Litem to enable them prosecute this matter.

(8) Therefore as things stand the Applicants have no ‘**locus standi**’ in this matter. **Black’s Law Dictionary 10<sup>th</sup> Edition** defines ‘**locus standi**’ as:-

“**Place of standing**” – **The right to bring an action or to be heard in a given forum.**”

(9) In the case of **JULIAN ADOGO ONGUNGA & ANOTHER –VS- FRANCIS KIBERENGE BONDEVA** (suing as the **Administrator of the Estate of FANUEL EVANS AMUDAVI (Deceased)**)eKLR the Court stated as follows:-

“**Simply put, a party without locus standi in a civil suit lacks the right to institute and/or maintain that suit even where a valid cause of action exists. Locus standi relates mainly to the legal capacity of a party. The impact of a party in a suit without locus standi can be equated to that of a court acting without jurisdiction since it all amounts to null and void proceedings. It is also worth-noting that the issue of locus standi becomes such a serious one where the matter involves the estate of a deceased person since in most cases the estate involves several other beneficiaries or interested parties.**” [own emphasis]

(10) The Applicants herein have not proved to this Court that they are infact the legal representatives of the late **STEPHEN KIMARI**. There is nothing to distinguish them from mere impostors or intermeddlers in the matter. I note that the Applicants did not in their submissions address this crucial issue of locus standi.

(11) In the circumstances I find that the present application is incompetent and is for dismissal. The Applicants may well have a valid claim but without evidence of proper locus standi this Court cannot delve into the merits of their case. I am left with no options but to dismiss the Summons for Revocation of Grant dated **8<sup>th</sup> March 2016**.

(12) Since this Court has not considered the merits of the Summons for or Revocation the Applicants may re-file the Summons once they have proper legal standing to do so. Costs are awarded to the Respondents.

**DATED IN NAIROBI THIS 21ST DAY OF MAY, 2021.**

.....  
**MAUREEN A. ODERO**

**JUDGE**