



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYAHURURU**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 14 OF 2019**

**IN THE MATTER OF THE ESTATE OF KAMAU NJUGUNA MAHIANYU (DECEASED)**

MARGARET WANGARI.....1<sup>ST</sup> APPLICANT

JOHN KARIERI KAMAU.....2<sup>ND</sup> APPLICANT

GRACE WAMBUI KIARIE.....3<sup>RD</sup> APPLICANT

MARY NJERI KAMAU.....4<sup>TH</sup> APPLICANT

RUTH MUKAMI KAMAU.....5<sup>TH</sup> APPLICANT

JANE WANJIKU KAMAU.....6<sup>TH</sup> APPLICANT

PETER WOKABI KAMAU.....7<sup>TH</sup> APPLICANT

JAMES MACHARIA KAMAU.....8<sup>TH</sup> APPLICANT

**-VERSUS-**

HANNAH WAIRIMU KAMAU.....RESPONDENT

**JUDGMENT**

1. The instant matter herein arises from a dispute over estate of Kamau Njuguna Mahianyu between the families of his two houses.
2. The genesis of same being that upon demise of deceased, the 1<sup>st</sup> house family secretly lodged P&A matter and subsequently shared the estate of the deceased to the exclusion of the 2<sup>nd</sup> family's interest.
3. Thus application for revocation of grant dated 10/06/2019 was lodged seeking to revoke grants issued to Hannah Wairimu Kamau in *Nyahururu SRM Court Succ. No. 12/1992* on 11/01/1993 in respect of estate of deceased and confirmed on 12/08/1993 be revoked.
4. Subsequently, land title *Laikipia/Nyahururu/22* and land in *Oljoro Orok* measuring 5 acres be declared part of estate of the deceased.
5. Further application seeks registration of *Nya/Lesirko/485* together with all subdivisions and transfers cancelled, revoked and nullified.
6. Registration of *Laikipia/Nyahururu/22* with all subdivisions and transfers be cancelled, revoked and nullified and original title be restored *Laikipia/Nyahururu/22*.
7. The Respondent to render full, accurate and detailed account of entire estate of deceased herein and estate be returned to status quo ante plus costs.
8. The court directed matter to be heard via viva voce evidence in which parties called their respective witnesses.

### APPLICANTS' CASE:

9. The 1<sup>st</sup> Applicant got married to the late Kamau Njuguna to whose estate these proceedings relate on or about the year 1957 and their marriage was blessed with 8 children one of whom one is deceased.
10. That the Respondent is her co-wife and had 9 children with the deceased.
11. That soon after her marriage to the deceased, the 1<sup>st</sup> Applicant, the Respondent and all their children all lived together in the same house in Gatuyaini village in Othaya and later in 1961 all of them moved to **Othaya/Kihugiru/57**, a 10-acre farm which the deceased had purchased, where the 1<sup>st</sup> Applicant and the Respondent carried out farming and specifically tea planting and tea picking. The proceeds thereof were deposited or paid into a bank account held by and in the name of the deceased (as evidenced by copy of receipt 'MWK 3' which also shows the deceased account with KTDA) and the money was used for the sustenance of them all.
12. That on or about the year 1965 or 1966 the deceased bought land **Nya/Lesirko/485 (29.899 acres)** on loan from Settlement Fund Trustees and the Respondent and her children relocated there following mutual agreement of them all as it did not make economic sense for them to all stay in one farm when there was another land.
13. That on or around the year 1967 or 1968 the another farm **Laikipia/Nyahururu/22 (55.127 acres)** was bought its disputed whether by deceased or respondent and structures were built therein, a 2 room house and a kitchen therein.
14. Disputed as properties of deceased for distribution are parcels number, **Othaya/Kihugiru/57, Nya/Lesirko/485, and Laikipia/Nyahururu/22**, however it is **Laikipia/Nyahururu/22** which respondent claims to have bought it and it had been registered in her name.
15. It is not disputed that the deceased was a farmer and a businessman with interests in the hotel and transport sectors, owned motor vehicle and supported and took care of his two wives and his children. During his lifetime he owned **various properties** and bank accounts and shares with KCC and ICDC.
16. The deceased is said to have lived primarily in Laikipia/Nyahururu/22. He was a man of means.
17. That unfortunately, following a dispute of ownership the 1<sup>st</sup> Applicant and the deceased were evicted from **Othaya/Kihugiru/57** by the owner and the land repossessed following a court order. Because the 1<sup>st</sup> Applicant and the deceased were allowed to continue picking tea for one year, the 1<sup>st</sup> Applicant lived with her children in the neighbouring ancestral land belonging to the deceased's father.
18. That shortly after, thereafter the deceased became very sick as a result of the said dispute and eviction and he passed away in 19<sup>th</sup> May, 1984.
19. After his death, it is said the Respondent threatened and barred the 1<sup>st</sup> Applicant from ever stepping on or accessing **Laikipia/Nyahururu/22**.
20. That since the 1<sup>st</sup> Applicant and her children did not have any other place to stay, they continued to be accommodate in the ancestral land belonging to the deceased's father and after succession was done in respect of the deceased's father estate, one acre was distributed to the 1<sup>st</sup> Applicant by the deceased's brothers.
21. That all through, the Respondent and her children resided in **Nya/Lesirko/485**.
22. After a long wait by the applicant to be invited by her co wife applicant herein, she learnt that the Respondent had secretly filed a **succession cause No. 113 of 1992** in the Senior Resident Magistrate's Court at Nyahururu and had all the properties of the deceased devolve wholly upon her.
23. That the Applicants' advocates on record also proceeded to peruse the court file **Nyahururu SRM Succession Cause No. 113 of 1992** and managed to procure documents annexed to the Applicants' supporting affidavit as copies of the court records and official receipt for payment of the copies.

### RESPONDENT'S CASE:

24. Respondent case is that the Applicant have not come to court with clean hands, and not in good faith, the she did not tell the court cogent reasons why she did not file for succession for her deceased husband and incase of any difficulty in getting the Respondent to co-operate, the steps she took to pursue her deceased husband estate.
25. Thus she is guilty of failing to proceed with reasonable speed or take deliberate steps to diligently apply for letters of administration after the demise of their husband or to apply at the appropriate time and stage during the succession process to either object or protest against the confirmation of grant.
26. The Applicant has educated children and who had been employed and so she cannot say she was a woman of no means or she was uneducated. In fact, the son one John Kiereri Kamau who is now 53 years told the court he is a graduate schooled in top schools, Njiiri High School and Jommo Kenyatta University. The son is an expert on Agriculture and one fails to understand why the Applicant did not take any

deliberate steps to pursue the succession.

27. The Applicant's daughter too who testified one Grace Wambui Kiarie said she is a graduate in Counselling and Psychology. She is now 52 years old she did not tell court sound reasons or grounds why they did not go to any chief either at Othaya or any other place i.e. Nyahururu or Oljoro Orok and seek assistance to file succession for the deceased father.

28. That the Applicants could not provide any existence of any attempt to pursue their father's property including filing of citation to say that their step mother had failed to co-operate in the succession process.

29. It is averred that, it is evident from the documents and testimony of the Applicant Margaret Wangari, her son John Kiereri Kamau and daughter Grace Wambui Kiarie that they were all aware that they ought to have pursued succession but since they knew their deceased father's wishes, coming to court after 35 years after demise of their deceased husband and father is an afterthought.

30. They took no deliberate action to ventilate their claims. It is the Respondent's view that the Applicant's action is an afterthought because all along they were aware of the decision on how the property ought to have been distributed.

31. That, the properties cited in the application were properties left in the hands of the Respondent bequeathed to her children save for title number **Nyahururu/22** which was bought by the Respondent Hannah Wairimu Kamau, vide the green card produced which shows that she took loan of Kshs.8,000/- in the year 1975 having purchased the same in 1967 and the same should be traced as her property and not part of the deceased property.

32. The testimony of Applicant Margaret Wangari, her son, John Kiereri and daughter Grace Wambui they used to visit title number **Nyahururu/22** cannot be true story because their testimony was contrasted by Susana Wahito Kamau who used to work on the title **Laikipia/Nyahururu/22** in the year 1972. She testified on 28<sup>th</sup> July, 2021 and said that she never saw the Applicant's on that disputed parcel of land.

33. The Respondent's testimony is that she bought the land title number **Laikipia/Nyahururu/22** and she used to pay the loan using her Barclays Bank D.C.O. Thompson Falls Kenya Branch for account number 2253 until payment in full.

#### **APPLICANTS' SUBMISSIONS:**

34. The applicant is deceased's wife and their marriage was blessed with children. The Respondent has admitted in paragraph 6 of her replying affidavit sworn on 2<sup>nd</sup> September, 2019 that the 1<sup>st</sup> Applicant is her co-wife and that the 1<sup>st</sup> Applicant had the children listed in paragraph 3 of her supporting affidavit with the deceased. The Respondent on cross – examination also admitted the same.

35. The Respondent's 3 witnesses Grace Njeri Kimani, Rose Waruguru and Peter Maina Kamau, who are her children, also admitted that the 1<sup>st</sup> Applicant is their step mother and the 2<sup>nd</sup> – 8<sup>th</sup> Applicants are their step brothers and sisters.

36. That the 1<sup>st</sup> Applicant being a wife of the deceased and all her children with the deceased respectively were never involved/included by the Respondent in the succession proceedings.

37. This was in contravention of the law which requires the person applying for a grant of letters of administration to disclose all surviving wives and children of the deceased.

38. The Applicants who had an equal or prior right to a grant of representation were not aware or informed nor did they consent.

39. That the respondent also did not inform the Applicants that she had petitioned for a grant of letters of administration. The Respondent was under a duty to cite or inform the Applicants of those proceedings.

40. There was therefore a defect in the proceedings leading up to the making of the grant and the non-disclosure of the 1 – 8<sup>th</sup> Applicants amounted to concealment of an important matter from the court and it had the effect of a misrepresentation of the true state of affairs.

41. That in the affidavit sworn by the Respondent in support of the petition of grant of letters of administration intestate filed on **Succession Cause No. 113 of 1993**, the Respondent disclosed herself as the only surviving wife of the deceased.

42. That the Respondent also left out her two children, a fact that she admitted in court. That the Respondent admitted during cross – examination that she had 9 children with the deceased two of whom passed away recently.

43. She did not include her three children with the deceased namely Grace Njeri Kimani, Rose Waruguru Maina and Margaret Wangari Kamau when applying for letters of administration. She listed 6 of her children contrary to the law.

The three are alive. That, Grace Njeri Kimani and Rose Waruguru Maina who were left out in the lower court succession case were witnesses of the Respondent and were cross – examined in court.

The Respondent concealed from court that there were other beneficiaries to the deceased's estate listing only herself and her 6 of her eight (8) children whilst leaving out the Petitioner and all her children with the deceased. The Respondent was unable to give any reason as to why she failed to include the Applicants and 3 of her children.

44. The Respondent therefore lied to the court in her affidavit in support of petition of letters of administration intestate filed on 10<sup>th</sup> November, 1992 in *Nyahururu Resident's Magistrate Court Succession Cause No. 113 of 1992* and in her affidavit in support of summons for confirmation of grant sworn on 12<sup>th</sup> July, 1993 that the deceased was only survived by her and the children listed in Form P&A 5 filed in court on 10<sup>th</sup> November, 1992.
45. The Respondent also concealed from the court that title No. *Laikipia/Nyahururu/22* formed part of the estate of the deceased and was available for distribution to the estate of the deceased.
46. It is clear that the grant and certificate of confirmation of grant were therefore obtained by the Respondent by making false statements and/or concealment from the court of material facts. The grant was confirmed without full disclosure of all the beneficiaries of the estate.
47. The Applicants were not aware of the lower court case and have never seen the alleged Kenya Gazette notice at all. They stated so in their affidavits and on cross – examination.
48. That the Respondents filed the succession cause 113 of 1992 in the lower court secretly, to inherit all the estate of the deceased and exclude the Applicants. The Applicants are entitled to inherit the deceased's estate, a right which they have been deprived due to the Respondent's fraud and concealment of material facts.
49. That the deceased did not during his lifetime distribute any of his properties to his two wives or children. Neither did the Petitioner and the Respondent enter into any agreement whatsoever for the Respondent to be the only administrator or beneficiary of the deceased's estate.
50. Further, it is confirmed by the documents filed by the Respondent in succession cause no. 113 of 1994 Nyahururu Magistrate's Court that she filed petition for grant intestate.
51. Therefore, the estate ought to be administered and distributed under intestacy laws.
52. The Respondents ought to have complied with the mandatory provisions of **Section 51 of the Law of Succession Act which prescribes that an application for a grant of representation shall include information as to .....in case of total or partial intestacy, the names and addresses of all surviving spouse and children of the deceased.**
53. **Rule 26 of Probate and Administration Rules** prescribes that letters of administration shall not be granted to any Applicant without notice to every other person entitled in the same degree as or in priority to the Applicant.
54. The beneficiaries did not execute any documents as consent on the mode of distribution as was stated in the case of *Mary Wangare Kihika v John Gichuhi Kinuthia & 2 Others [2015] eKLR* in revoking the grant of letters of administration due to no compliance with the law.
55. On *Re Estate of Geoffrey Mwaura Ngoima (Deceased) Succession Cause No. 130 of 2005 eKLR* where the court in revoking a grant held that:
- “The Law of Succession Act does not put a timeline within which a person can file an application for revocation of grant. Section 76 particularly provides that;***
- ‘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.’***
56. The above anomalies confirm that the Respondent did not conform to the legal requirements of obtaining a grant and thereby the process was defective in substance and they concealed material facts as provided by **Section 76 of the Law of Succession Act** and therefore the grant and confirmation thereof should be revoked.
57. On *Nyamira High Court Succession Cause No. 13 of 2004 Monica Adhiambo v Maurice Odera Koko [2016] eKLR* where the petitioner sought and obtained grant of letters of administration and a confirmation of grant and proceeded to register the original parcel to her name. afterwards, the petitioner entered into a land sale agreement with the interested party whereby the petitioner subdivided the original parcel of land and transferred and registered one of the sub divisions in the name of the interested party.
58. The objector in the matter sought revocation of the grant and nullification of title in respect of the original parcel of land.
59. The court revoked the grant for non-disclosure of material facts and held that the fact that the Petitioner's title over the original 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. It would be unfair to validate the illegal actions of the petitioner.
60. Even though the Respondent denied, the Applicants still insist that the deceased owned a 5-acre parcel of land in Oljoro Orok and should they get any evidence pertaining the deceased's ownership they will present it to this court.
61. The registration of the Respondent as the proprietor of title no. *Nya/Lesirko/785* and title No. *Laikipia/Nyahururu/22* should therefore be cancelled, revoked and/or nullified together with all the sub divisions and transfers of the deceased's property original *Nya/Lesirko/485*

and title No. *Laikipia/Nyahururu/22*.

62. The Respondent's registration as the owner of the deceased's bank accounts, deceased's shares with ICDC and KCC following from the confirmed grant should also be cancelled, revoked and nullified.

63. **Section 73 of the Probate and Administration Rules** fortifies this position thus:

***“Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”***

64. That it is in the interest of justice that the letters of administration and confirmation of grant issued to the Respondent should be annulled and/or revoked and the court do cancel all the resulting sub division or sales of the properties comprising the deceased's properties and restore the entire estate of the deceased to status quo ante.

65. That an administrator should also be appointed from the Applicant's side and the entire estate of the deceased should then be distributed amongst the beneficiaries and heirs of the deceased.

66. Clearly, the Respondent lacked legal capacity to transfer any portion of the suit parcel of land to her children or to any other third party. She had no capacity transfer the properties as she did to anyone. The transfers made by the Respondent pursuant to grant to the grant of letters of administration intestate by lower court should therefore be reversed. The subdivision done at the behest of the respondent should be cancelled. The titles in respect of the land *Nya/Lesirko/485* and in respect of *Laikipia/Nyahururu/22* should revert to the name of the deceased and to the estate of the deceased respectively.

#### **RESPONDENT'S SUBMISSIONS:**

67. The Applicants have not shown whether the letter of administration and confirmed grant were marred with any procedural defects, the P&A case number 113/1992 was submitted in accordance with the ***Law of Succession Act 1981*** and the same was done in consultation with the Applicants, no objection was raised at the point when Kenya Gazette was published and no protest was filed before confirmation of grant.

68. There is no sound explanation given for the inaction for more than 35 years since the demise of their deceased husband and father.

69. The Applicant is guilty of laches and indolent in pursuit of their claim.

70. There is evidence to show that the Applicants have been aware or at least were expected to be aware of what was going on in the court or at least should have taken action to pursue their claims.

71. Thus there is a clear case of delay and causing unnecessary costs.

72. That no interests exist in the properties since the same have been extinguished by effluxion of time and have been transferred to 3<sup>rd</sup> parties and are not in the name of the deceased and therefore no longer available for them to enjoy.

73. The Applicants are being economical with the truth about facts regarding the deceased estate.

74. Equity aids the vigilant and not the indolent.

75. Respondent relies on the following cases ***Monica Wangui Kimani & Another v Josephat Mburu Wainaina [2015] eKLR***, ***Estate of the late M'Nthaka Kibata (deceased) [2019] eKLR***, and ***Albert Imbuga Kisigwa v Recho Kawai Kisigwa [2016] eKLR***, .

76. ***As to whether there is any property available for distribution and that form part of estate;*** the answer is no, the reason being that the deceased had already settled the 1<sup>st</sup> Applicant and the Respondent together with their children in parcels of land of which no one was to change that position. The conduct of the Applicants of not pursuing their claim for close to 35 years speaks for itself.

77. The Applicant lives in ***Othaya/Ihurio/717*** the land she acquired through Succession Cause and which belonged to her deceased husband and which forms part of the estate and which the Respondent is not claiming any.

78. Both 1<sup>st</sup> Applicant and Respondent are all over 90 years and ailing and any orders reversing or affecting the status quo is likely to cause more disruption in their lives and to their health detriment.

79. The Respondent has undergone costs of succession and developing the properties and any order affecting the properties i.e. ***Nyandarua/Lesirko and Nyahururu/22*** which she solely owned will affect her health and is likely to cause irreparable harm and loss to her and her children.

#### **ISSUES, ANALYSIS AND DETERMINATION**

80. The core issues which court gathers from material before court are **whether there is material to meet the requirement of section 76 of LSA cap 160 LOK to warrant revocation of grants in issue. If aforesaid is in affirmative, what are the appropriate orders in the**

circumstances of the instant case? And what is the order as to costs?

81. The application for determination is premised on **section 76 of the Law of Succession Act, Cap 160, Laws of Kenya**. The said provision states as follows:

***“76. Revocation or annulment of grant***

***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;***

***(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—***

***(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or***

***(ii) to proceed diligently with the administration of the estate; or***

***(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or***

***(e) that the grant has become useless and inoperative through subsequent circumstances.”***

82. **8. Under section 76**, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems.

83. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa.

84. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required.

85. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.

86. The applicant is deceased's wife and their marriage was blessed with children. The Respondent has admitted in paragraph 6 of her replying affidavit sworn on 2nd September, 2019 that the 1st Applicant is her co-wife and that the 1st Applicant had the children listed in paragraph 3 of her supporting affidavit with the deceased. The Respondent on cross – examination also admitted the same.

87. The Respondent's 3 witnesses **Grace Njeri Kimani, Rose Waruguru and Peter Maina Kamau**, who are her children, also admitted that the 1st Applicant is their step mother and the 2nd – 8th Applicants are their step brothers and sisters.

88. That the 1st Applicant being a wife of the deceased and all her children with the deceased respectively were never involved/included by the Respondent in the succession proceedings.

89. This was in contravention of the law which requires the person applying for a grant of letters of administration to disclose all surviving wives and children of the deceased.

90. The Applicants who had an equal right to a grant of representation were not aware or informed nor did they consent.

91. That the respondent also did not inform the Applicants that she had petitioned for a grant of letters of administration. The Respondent was under a duty to cite or inform the Applicants of those proceedings.

92. There was therefore a defect in the proceedings leading up to the making of the grant and the non-disclosure of the 1 – 8th Applicants amounted to concealment of an important matter from the court and it had the effect of a misrepresentation of the true state of affairs.
93. That in the affidavit sworn by the Respondent in support of the petition of grant of letters of administration intestate filed on Succession Cause No. 113 of 1992, the Respondent disclosed herself as the only surviving wife of the deceased.
94. That the Respondent also left out her two children, a fact that she admitted in court. That the Respondent admitted during cross – examination that she had 9 children with the deceased two of whom passed away recently. She did not include her three children with the deceased namely Grace Njeri Kimani, Rose Waruguru Maina and Margaret Wangari Kamau when applying for letters of administration. She listed 6 of her children contrary to the law.
95. The three are alive. In fact, Grace Njeri Kimani and Rose Waruguru Maina who were left out in the lower court succession case were witnesses of the Respondent and were cross – examined in court.
96. The Respondent concealed from court that there were other beneficiaries to the deceased’s estate listing only herself and her 6 of her eight (8) children whilst leaving out the applicant and all her children with the deceased. The Respondent was unable to give any reason as to why she failed to include the Applicants and her children.
97. The Respondent therefore lied to the court in her affidavit in support of petition of letters of administration intestate filed on 10th November, 1992 in Nyahururu Resident’s Magistrate Court Succession Cause No. 113 of 1992 and in her affidavit in support of summons for confirmation of grant sworn on 12th July, 1993 that the deceased was only survived by her and the children listed in Form P&A 5 filed in court on 10th November, 1992.
98. It is clear that the grant and certificate of confirmation of grant were therefore obtained by the Respondent by making false statements and/or concealment from the court of material facts. The grant was confirmed without full disclosure of all the beneficiaries of the estate.
99. The Applicants were not aware of the lower court case and have never seen the alleged Kenya Gazette notice at all. They stated so in their affidavits and on cross – examination.
100. That the Respondents filed the succession cause 113 of 1992 in the lower court secretly, to disinherit and exclude the Applicants. The Applicants are entitled to inherit the deceased’s estate, a right which they have been deprived due to the concealment of material facts.
101. Further, it is confirmed by the documents filed by the Respondent in succession cause no. 113 of 1992 Nyahururu Magistrate’s Court that she filed petition for grant intestate.
102. Therefore, the estate ought to be administered and distributed under intestacy laws.
103. The Respondents ought to have complied with the mandatory provisions of **Section 51 of the Law of Succession Act** which prescribes that ***an application for a grant of representation shall include information as to .....in case of total or partial intestacy, the names and addresses of all surviving spouse and children of the deceased.***
104. **Rule 26 of Probate and Administration Rules** prescribes that letters of administration shall not be granted to any Applicant without notice to every other person entitled in the same degree as or in priority to the Applicant.
105. The beneficiaries did not execute any documents as consent on the mode of distribution as was stated in the case of ***Mary Wangare Kihika v John Gichuhi Kinuthia & 2 Others [2015] eKLR*** .in revoking the grant of letters of administration due to no compliance with the law.
106. On ***Re Estate of Geoffrey Mwaura Ngoima (Deceased) Succession Cause No. 130 of 2005 eKLR*** where the court in revoking a grant held that:
- “The Law of Succession Act does not put a timeline within which a person can file an application for revocation of grant. Section 76 particularly provides that;***
- ‘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.’***
107. The above anomalies confirm that the Respondent did not conform to the legal requirements of obtaining a grant and thereby the process was defective in substance and they concealed material facts as provided by Section 76 of the Law of Succession Act and therefore the grant and confirmation thereof is for revocation.
108. In ***Nyamira High Court Succession Cause No. 13 of 2004 Monica Adhiambo v Maurice Odera Koko [2016] eKLR*** where the petitioner sought and obtained grant of letters of administration and a confirmation of grant and proceeded to register the original parcel to her name. afterwards, the petitioner entered into a land sale agreement with the interested party whereby the petitioner subdivided the original parcel of land and transferred and registered one of the sub divisions in the name of the interested party.
109. The objector in the matter sought revocation of the grant and nullification of title in respect of the original parcel of land.

110. The court revoked the grant for non-disclosure of material facts and held that the fact that the Petitioner's title over the original 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. It would be unfair to validate the illegal actions of the petitioner.

111. The respondents side submit that there is no sound explanation given for the inaction for more than 35 years since the demise of their deceased husband and father.

112. The Applicant is guilty of laches and indolent in pursuit of their claim.

113. There is evidence to show that the Applicants have been aware or at least were expected to be aware of what was going on in the court or at least should have taken action to pursue their claims.

114. Thus there is a clear case of delay and causing unnecessary costs.

115. That no interests exist in the properties since the same have been extinguished by effluxion of time and have been transferred to 3rd parties and are not in the name of the deceased and therefore no longer available for them to enjoy.

116. The court after going through the pleadings, proceedings evidence and submissions on record finds that the respondent never endeavored to inform he co-wife, or her children of the commencement of the proceedings in issue nor disclose of their existence as beneficiaries.

117. Material facts were concealed and falsehoods was apparent in sin pleadings by respondent. Despite the delay in seeking revocation of grants. The set out procedures of processing succession matters was breached as stated above thus the court finds that the circumstances of this matter warrants grant to be revoked.

118. As to revocation of titles subjects herein, it is not disputed that **Laikipia/Nyahururu/ 22** is claimed to be owned by the respondent and it is not disputed that it was at no time registered in decease person name. The claim by respondent is thus claim to title to the land and not as a beneficiary but proprietor via purchase.

119. Musyoka, J. in this regard expounded as to when a matter is best placed for a succession cause and when it ought to be referred to another Court with concurrent jurisdiction in In ***Re Estate of Alice Mumbua Mutua (Deceased) [2017] eKLR*** as follows:

***"....The Law of Succession Act, and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.***

***Disputes of course do arise in the process. The provisions of the Law of Succession Act and the Probate and Administration Rules are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependants. However, claims by and against third parties, meaning persons who a neither survivors of the deceased nor beneficiaries, are for resolution outside of the framework set out in the Law of Succession Act and the Probate and Administration Rules. Such have to be resolved through the structures created by the Civil Procedure Act and Rules, which have elaborate rules on suits by and against executors and administrators.***

120. ***The Probate and Administration Rules*** recognize that, and that should explain the provision in ***Rule 41(3)***, which provides as follows –

***"Where a question arises as to the identity, share or estate of any person claiming to be beneficially interested in, or of any condition or qualification attaching to, such share or estate which cannot at that stage be conveniently determined, the court may prior to confirming the grant, but subject to the provisions of section 82 of the Act, by order appropriate and set aside the particular share or estate or property comprising it to abide the determination of the question in proceedings under ... the Civil Procedure Rules ..."***

121. ***Rule 41(3) and 42 (2) of the Probate and Administration Rules***, empowers the Court before confirmation of a grant to remove property which is in contest from the schedule of assets and have the same determined separately. If the contested property is found to be part of the Estate of the Deceased, the same is restored back to the schedule of assets of the deceased's estate available for distribution.

122. It is notable in this regard that disputes primarily concerning ownership of land title to land fall within the jurisdiction of the Environment and Land Court as provided by ***Article 162 (2)(b) of the Constitution, and Section 13(1) and (2) of the Environmental and Land Court Act***.

123. Thus the court makes the following orders;

***i. The grants issued to Hannah Wairimu Kamau in Nyahururu SRM Court Succ. No. 12/1992 on 11/01/1993 in respect of estate of deceased and confirmed on 12/08/1993 be and are hereby revoked.***

***ii. The registration of Nya/Lesirko/485 together with all subdivisions and transfers are hereby cancelled, revoked and nullified.***

*iii. Land title Laikpia/Nyahururu/22 will remain un distributed to await a window of 3 months for the applicant to lodge claim in ELC court over the ownership of the same. It shall not be transferred or subdivided nor offered as security until ELC determines the ownership of same. In absence of ELC claim within timelines set, the claim will be deemed abandoned.*

*iv. Once particulars of land in Oljoro Orok measuring 5 acres are traced the applicant will claim same to be declared part of estate of the deceased and or otherwise.*

*v. Each house of the deceased to nominate 2 names to be appointed as administrators of deceased estate within 30 days in default court to appoint at its discretion.*

*vi. The parties shall agree on distribution of estate or put separate proposals within 60 days of this ruling.*

*vii. Any issue of account can be part of distribution hearing or consent if any.*

*viii. No orders as to costs.*

*ix. There be liberty to apply.*

**DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 16TH DAY OF DECEMBER, 2021.**

.....

**CHARLES KARIUKI**

**JUDGE**