



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 49 OF 2016**

**(FORMERLY MERU H.C SUCC. CAUSE NO. 191 OF 1996)**

**IN THE MATTER OF THE ESTATE OF GEOFFREY KIRICHO MBOGORI (DECEASED)**

JANE KAGIGE GEOFFREY.....1<sup>ST</sup> PETITIONER

KARIMI KIRICHO.....2<sup>ND</sup> PETITIONER

VERSUS

WALLACE IRERI NJERU.....INTERESTED PARTY

BRAZON MUNENE KIRICHO.....1<sup>ST</sup> OBJECTOR

CHARITY KAIMURI GEOFFREY.....2<sup>ND</sup> OBJECTOR

**R U L I N G**

1. Before this court is Summons for Revocation of Grant dated 30<sup>th</sup> September 2019 taken by Brazon Munene, the Applicant herein seeking for revocation of a grant made to Jane Kagige Geoffrey and Beatrice Karimi Kiricho pursuant of a judgment of this court dated 19<sup>th</sup> December 2018.
2. The Applicant has sought for revocation of the said grant on the following grounds namely:-
  - a) *That the grant has become inoperative because of demise of one of administrators and the remaining one is very old and weak to complete the process.*
  - b) *The other ground is that the applicant should be appointed as an administrator.*
3. In his Supporting Affidavit sworn on 30<sup>th</sup> September 2019, the Applicant has reiterated the first ground and exhibited a death certificate serial No.0351614 to demonstrate that Kirimi Kiricho is deceased having died on 23<sup>rd</sup> February 2019 at Komu Sub-location, Chogoria.
4. The Applicant has also averred that the 1<sup>st</sup> Administratrix is old and sickly and on that basis he is asking this court to revoke the grant and issue a fresh one solely to him or jointly with another beneficiary.
5. The Respondent (Jane Kagige Geoffrey) has opposed this application vide Replying Affidavit sworn on 5<sup>th</sup> October 2019. According to her this court is now *functus officio* after rendering itself vide judgment delivered on 19<sup>th</sup> December 2018. She has further averred that there is an appeal to Court of Appeal preferred by Wallace Ileri which appeal is pending.
6. The Respondent has contended that the only reasonable step under the circumstances is to ask for substitution of the deceased administratrix and not revocation of grant. She contends that the application is unmerited as it does not satisfy the grounds set out under **Section 76 of Law of Succession Act**.
7. This is an application for Summons for Revocation of a Grant issued on 19<sup>th</sup> December 2018 through a judgment delivered on the same day. The Applicant has invoked **Section 76 of Law of Succession Act Cap 160** which outlines grounds for revocation of a grant as follows:-

- a) *When the proceedings to obtain the grant are defective in substance.*
- b) *When a grant has been obtained fraudulently through concealment of material facts.*
- c) *When a grant has been obtained by means of untrue allegation even if the allegations were made ignorantly or inadvertently*
- d) *When the person whom the grant was made has failed after due notice to apply for confirmation or proceed diligently with the administration of estate.*
- e) *When a grant is rendered useless or inoperative through subsequent circumstances.*

8. The Applicant has apparently invoked the last ground that is the fact that the demise of one of the administratrixes has rendered the administration of the estate herein inoperative. While it is not contested that the 2<sup>nd</sup> administratrix Karimi Kiricho is now deceased, the appropriate remedy in such instances is to move the court for substitution if the remaining administratrix is impaired or afflicted by any disability.

9. The Applicant claims that the remaining administratrix Jane Kagige Geoffrey is old which is true because I have taken judicial notice of that fact but to say she is unable to carry on with the administration of the estate herein in my view is not well founded because she has been actively participating in the proceedings herein including this application and has not exhibited any disability despite her apparent old age. This court therefore finds that the Summons for Revocation of Grant dated 30<sup>th</sup> September 2019 is unmerited and the same is disallowed. I further invoke my powers under **Section 47 of the Law of Succession Act** for purposes of expediency by directing that Jane Kagige Geoffrey to be the sole administratrix and proceed to administer the estate of the deceased herein. In order to bring this matter to an end I direct the Deputy Registrar to execute document on behalf of any party who may be reluctant to execute requisite documents to facilitate transmission of the estate to the respective beneficiaries as determined by this court in the certificate of confirmation. I direct Land Registrar to dispense with production of PINS/IDS of those beneficiaries who may be reluctant to cooperate and I also direct the OCS Chuka to provide security to the District Surveyor to carry out subdivisions of the estate as per the certificate of confirmation issued herein.

I shall make no order as to costs in this application for now but parties must pay for surveyor's fees.

**Dated, signed and delivered at Chuka this 28<sup>th</sup> day of January 2020.**

**R.K. LIMO**

**JUDGE**

**28/1/2020**

Ruling signed, dated and delivered in open court in the presence of Kariuki for Interested Party, Jane Kagige, Respondent, Applicant in person and 2<sup>nd</sup> Objector in person.

**R.K. LIMO**

**JUDGE**

**28/1/2020**