



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 472 OF 2013**

**FORMERLY CAUSE NO. 15 OF 2006 (NAIROBI)**

**In the Matter of the Estate Of Rufus Kiambati M'ikuri (Deceased)**

**JENNIFER KARWIRWA ..... 1<sup>ST</sup> APPLICANT**

**RUTH MUKUBA ..... 2<sup>ND</sup> APPLICANT**

**LUCY KAGWIRIA ..... 3<sup>RD</sup> APPLICANT**

**FRIDAH NKATHA ..... 4<sup>TH</sup> APPLICANT**

**NANCY NAITO ..... 5<sup>TH</sup> APPLICANT**

**ANN GACHERI ..... 6<sup>TH</sup> APPLICANT**

**-versus-**

**MARTIN KOOME ..... RESPONDENT**

**PARTIAL RULING**

1. Before me is a summons dated 16/05/2019 which seeks for revocation and or annulment of the grant of letters of administration issued to the late Glory Nkuene Rufus and Martin Koome Kiambati on 9/10/2007. The application is expressed to be brought pursuant to **Section 76 of the Law of Succession Act CAP 160 Laws of Kenya** and **Rules 44, 49 and 73 of the Probate and Administration Rules**. I have considered arguments that were presented for and against the application. One stands out; that, subsequent to the confirmation of grant, a written will of the deceased dated 26/12/1999 was discovered. According to them, the will distributed the estate between the two houses. On this basis, the applicants made two arguments. One, that the presence of a will makes the grant of letters of administration intestate inappropriate. Two, that, as long as the distribution of the estate was not in accordance with the will, but as if the estate is an intestate estate, the distribution is inconsistent with the wishes of the deceased expressed in the will, and therefore, void.

2. As a matter of law and procedure, where there is a will with named executors, the court will make a grant of probate. Except, however, where the will does not name any executor or the named executors have renounced the executorship or for any reason a grant of probate cannot be made to the named executor or executors, the court will make a grant of letters of administration with will annexed. I will not forget also that a grant of letters of administration with will annexed will be issued for the part that is un-administered due to death of the sole executor or all executors, or where the will partially disposes of the estate, the court will make a grant of letters of administration in respect of the part of the estate that has not been disposed of testamentary.

3. Having stated the law, I have looked at the document annexed hereto. It is written in Kimeru language. No translation of the said document that was provided by the parties. I do note however that the respondent also alluded to the document. Apparently, both parties seem to refer to the said document albeit to support their varied positions on the grant. It could be that the parties place value on the document. In the circumstances, I do not wish to ignore the document. I find it judicious for the court to be properly seized of the said document before it can make a final determination of the application for revocation. This is out of abundance of caution and as a matter of justice especially because this is a succession proceeding.

4. The court will, however, be in a position to consider the document upon a certified translation thereto being provided. Accordingly, I will defer the ruling on revocation of grant and order that a certified translation of the alleged be provided to court and served by the applicants within 14 days of today. Ruling on application for revocation on 16<sup>th</sup> September 2020.

5. It is so ordered.

**Dated, signed and delivered at Meru this 29<sup>th</sup> day of July 2020**

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**F. GIKONYO**

**JUDGE**