



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

SUCCESSION CAUSE NO 54 OF 2017

IN THE MATTER OF THE ESTATE OF JAMES NG'ANG'A KANYARA

alias JAMES NG'ANG'A KANYARA GIKUNI (DECEASED)

RULING

1. **James Ng'ang'a Kanyara alias James Nganga Gikuni**, the deceased herein, died intestate on 28th October 2012. During his lifetime, he did not marry. He worked as a senior researcher with the **Kenya Medical Research Institute**, commonly known as **KEMRI** and had acquired several properties by the date of his death. On 22nd April 2013 a letter signed by one **Isaac W. Kimani** was issued through the office of the Chief, **Githiga Location** being **Ref. GITH/MDS/30/7/VOL. VIII/68** identifying **Fiona Wangui Ngoima** (adult) and **WKN** (minor) as the children left behind by the deceased. This letter was filed with the petition for letters of administration filed on 15.7.2013 by the petitioners **Mary Gaiti Mugambi** described therein as mother to **WKN** alias **WMM**, (hereafter M), in conjunction with **James Ndungu Kanyara** described as a brother to the deceased.

2. The petition, namely, **Nairobi Succession Case No. 1689 of 2013** was duly gazetted on 26th November 2013. However, on 26th November 2013, **Fiona Wangui Ngoima** (hereafter Fiona) filed an objection and cross petitioned for a grant. Nevertheless, by a consent filed on 18th July 2014 by the Petitioners and the Objector and adopted by the court on 21/7/2014, a grant issued in the names of Fiona and Mary Gaiti, the latter in her capacity as trustee for her son WMM, then still a minor.

3. On 3rd September 2013, a second succession cause being **Nairobi Succession Cause No. 2239 of 2013** was filed by the deceased's mother **Eunice Nyathira Kanyara** and the deceased's siblings **James Ngure Kanyara** and **Lucy Wambui Kanyara**. With the consent of other siblings, persons with equal or priority entitlement to apply namely, **James Ndungu Kanyara**, **Joseph Njoroje Kanyara**, **Mary Wanjiku Kamau**, **Grace Nduta Kanyara** and **Martin Muigai Kanyara**. Attached to this latter Petition was a letter dated 30th January 2013, signed by one **Peter G. Githaiga**, Assistant Chief Matuguta Sublocation, Githunguri. The letter stated in part that the deceased herein never married and that he was survived by his mother Eunice Nyathira Kanyara, and siblings James Ngure Kanyara and Lucy Wambui Kanyara. On 9th January 2014 a grant was issued to Eunice Nyathira Kanyara, James Ngure Kanyara and Lucy Wambui Kanyara (hereafter the Petitioners) and a summons for confirmation of the grant filed on 21/11/14.

4. Fiona, having learned of the second succession cause filed an application to revoke this latter grant, on 14th January 2015. On grounds that the grant in **Succession Cause No. 2239 of 2013** was obtained fraudulently by the Petitioners through the making of false statements and concealing the fact that the deceased was survived by two children, namely, Fiona and WMM; that the proceedings to obtain the grant were defective in substance as the said children were not involved or included as beneficiaries and heirs, yet they ranked higher in priority than the Petitioners and were therefore the rightful heirs to the estate of the deceased.

5. The gist of the affidavit evidence of Fiona was that she was a biological child of the deceased together with her half-brother WMM, a fact known to the Petitioners herein but concealed from the court. She deposed that the letter by the Deputy County Commissioner which was the basis of the grant issued herein to the Petitioners had been revoked by the same office *vide* a letter dated 17th April 2013. Hence the grant issued was illegal and liable for revocation. Moreover, that she and her half-brother are the only heirs and beneficiaries to the deceased's estate and that the Petitioners rank low in priority to them.

6. A replying affidavit had been filed by the deceased's mother **Eunice Nyathira Kanyara** who however died during the pendency of the cause and was replaced by a son, also brother to the deceased, one James Ngure Kanyara. He filed an affidavit in opposition to the revocation application, on 26th March 2019. He took issue with Fiona's assertion to be the deceased's daughter and deposed that indeed Fiona was the daughter of one Steve **Lawrence Kim Njoroje** (deceased) and Mercy Ngoima as evidenced in pleadings in **Nairobi Succession Cause No.1317 of 1999 In the Estate of Steve Lawrence Kim Njoroje** and that Fiona also benefitted from the said estate. He proffered a copy of a birth certificate allegedly obtained from government offices showing that the name of Fiona's father was not in the alleged genuine birth certificate and asserted that the birth certificate proffered in this cause by Fiona to the contrary was a forgery.

7. He asserted further that neither **Mercy Njeri Ngoima** the mother to Fiona, nor **Mary Gaiti Mugambi** mother of WMM were ever married to the deceased. He disputed that WMM was the deceased's son, and deposed that in any event, by a deed poll executed in 2008, WMM had abandoned his ties to the deceased when he dropped the family name WKN and adopted the name of her mother's husband and therefore

assuming the name WMM. Thus, according to James Ngure Kanyara, the said WMM is a recognized son of WMM and cannot have two fathers. He took the position that neither WMM nor Fiona are entitled to a grant of letters in respect of the estate of the deceased; and that he and his sister **Lucy Wambui Kanyara** as siblings of the deceased rank high in priority as the rightful administrators of the deceased's estate. He urged the court to dismiss the application and to revoke the grant to **Mary Gaiti Mugambi** and Fiona in Succession Cause No. 1689 of 2013.

8. The two succession causes were consolidated before transfer to this Court. Directions on the hearing of the revocation application were issued by **Muigai J** on 26/10/15 as follows:

“(1) The matter be heard inter partes through viva voce evidence.

(2) The parties to rely on the sworn affidavits in the court (court) file as deponents testify.....”

9. Upon the transfer of the suits to this court, the court reiterated the directions stating that hearing would proceed by way of cross-examination of witnesses who had sworn/filed statements/affidavits. Although there are statements and affidavits on record sworn by **WMM** and his mother **Mary Gaiti Mugambi**, and by Fiona's mother, **Mercy Njeri Ngoima**, none of these persons testified and I will return to the omission later in this ruling, as it has a bearing on the eventual outcome of the case. Two witnesses gave evidence on either side, namely, Fiona and James Ngure Kanyara (hereafter James). Both adopted their affidavits as their evidence- in- chief and were cross-examined thereon. Hence no useful purpose will be served by repeating their depositions here. Eventually, parties filed written submissions as directed by the court on 24.7.2019.

10. Before setting out the submissions on behalf of Fiona and WMM, it is necessary to state that some of the statements contained in the portion of the submissions headed **“History of the Matter”** are not accurate. The first is an assertion at paragraph 11 to the effect that on 2nd November 2017 before **Ngugi J** **“it was conceded that there was no dispute that the Applicant and WMM were children of the deceased.”** Having perused the record of proceedings on 2nd November 2017, I cannot find any record of the alleged concession. Indeed, all that the court did on that date was to assign hearing dates. Further, at paragraph 13 of the submissions, it is stated that on 24th July 2019 a consent was recorded before the court by the parties so that **“the court admitted the affidavit of Mercy Njeri Ngoima, WKN and Mary Gaiti Mugambi without the need of calling the makers.”**

11. In regard to the latter assertion, it is instructive that after Fiona had testified on 17/5/18, counsel for Fiona, Mr. Nyaribo sought adjournment indicating that his client (I presume Fiona's mother) and WMM resided abroad. He sought another hearing date to avail them to testify. He suggested dates when they would be available, i.e. 26th and 27th September 2018. Come the 26th September 2018 and Fiona's witness was absent. Thus, the matter was adjourned, and again on the next date following the death of Eunice Kanyara. The hearing resumed on 24/7/2019. On the same morning, a letter dated 23rd July 2019 had been filed into the court by Fiona's advocates. The letter, addressed to the Deputy Registrar of the court stated *inter alia* that:

“Our client's mother, Ms Mercy Njeri Ngoima, is scheduled to testify tomorrow but she has not been able to travel from the United States of America where she is currently resident due to an ongoing civil suit barring her from travelling outside the jurisdiction of her country of residence. We have attached an Affidavit dated 22nd July 2019 sworn by her Attorney Nancy K. Whitehead attesting the above. In the circumstances we will be seeking to substitute her testimony with that of her brother Geoffrey Kang'ethe Ngoima, and shall therefore require time to rectify the affidavits. In this regard we have no intention of adjourning the matter and are willing to proceed with the testimony of other parties before we substitute the witnesses as above mentioned.”

12. An affidavit by the stated lawyer was attached to the letter. When the matter was called out on the morning of 24th July 2019, all parties indicated readiness to proceed and at the scheduled time, counsel for Fiona briefly addressed the court as follows:

“We close our case and rely on the affidavit of Fiona Wangui”.

While Counsel for WMM equally stated:

“We shall also rely on the affidavits filed and annexures thereto.”

Whereupon James Ngure Kanyara took the witnesses stand on behalf of the Petitioners. This means that Fiona's second witness Mercy Ngoima did not testify. Neither did WMM or his mother Mary Gaiti Mugambi.

13. At no time during these proceedings was a consent recorded by the parties to admit the affidavit evidence of Fiona's mother or the affidavits/statement of WMM and/or his mother Mary Gaiti Mugambi as evidence, without calling the deponents, as stated at paragraph 13 of Fiona's submissions.

14. On this score, the advocates for WMM submit on their part that:

“On 24th July 2019 Fiona Ngoima and WKN made an application that they be allowed to rely on affidavit evidence and annexures thereto on the ground that they could not procure the attendance of the deponents the application to proceed by way of affidavit evidence was not objected to by counsel for the Petitioners In the absence of objection to have the matter proceed by way of affidavit evidence, the Petitioners are estopped from challenging the affidavit evidence adduced by WKN alias WMM on the basis that the deponents were never called to testify.”

The record of the day's proceedings contains neither a consent recorded by the parties as asserted by Fiona's advocates nor the kind of application alluded to by counsel for WMM. The statements made to the court by the said counsels before James Ngure Kanyara took to the witness stand, neither amount to a consent nor application to admit affidavit evidence without calling the deponents of filed affidavits. Directions having twice been given on the manner in which the hearing would proceed, namely, through *viva voce* evidence, it was not open to the parties to unilaterally, and without an explicit order of the court, to deem them as altered through their oblique statements of intent made on 24/7/19 prior to the recommencement of the hearing. Thus, there was no consent recorded, application made and allowed for the admission of the affidavits by Fiona's witness Mercy Njeri Ngoima, or the statement by WMM

15. or his mother Mary Gaiti Mugambi's affidavit without calling these witnesses.

16. Turning to the parties' substantive submissions, these revolved around two key issues, namely, whether Fiona and WMM are children of the deceased and therefore entitled to be appointed administrators of the estate of the deceased, and whether the grant issued herein ought to be revoked. On the first question the Fiona's submissions firstly underscore the twin facts of Fiona's appointment as administrator in Succession Cause No.1689/2013 and that WMM does not dispute that Fiona was a child of the deceased. And highlighting the contents of the birth certificate marked **FWN1** attached to Fiona's affidavit, the chief's letter marked annexure **FNW 3**, the testimony by Fiona and her mother's affidavits assert that indeed Fiona was a child of the deceased in terms of the provisions of Section 3(2) of the Law of Succession Act.

Discounting allegations that her birth certificate was a forgery, Fiona placed reliance on explanations contained in Mercy Ngoima's affidavit on the existence of two birth certificates in respect of Fiona and asserted that the burden of proving that the birth certificate above that was proffered by Fiona was a forgery lay with the Respondents, citing Section 109 of the Evidence Act. It was submitted that nothing turns on the fact that Fiona's names differing from her paternal grandmother's as no evidence was led concerning the system of naming of children under Kikuyu custom, and further that her admitted inclusion as a child/beneficiary in the estate of her alleged step-father could not bar her from benefitting from the estate of the deceased who was allegedly her biological father. Reference was made to the affidavit of Fiona's mother on that score. Thus, it was submitted that she and the half-brother WMM

17. were the persons entitled to administer the estate of the deceased.

18. On the second issue, it was stated that the Respondent Petitioners led by the deceased's late mother had failed to disclose to the court the existence of two children surviving the deceased and also failed to inform or obtain the consent of these children prior to seeking a grant. Thus, their grant is liable for revocation under Section 76 of the Law of Succession Act.

19. On behalf of WMM, it was submitted that WMM had through affidavit evidence demonstrated that he was a son to the deceased and a rightful heir to the estate. Reliance was placed in particular on his birth certificate which it was said had not been challenged, his counsel arguing that the admitted change of name from WKN to WMM did not alter the fact that he was a biological son and heir to the deceased. On the second issue it was contended that by failing to disclose the existence of children surviving the deceased, or to obtain the consent before applying for the impugned grant the petitioners herein were guilty of material non-disclosure and obtained the grant through fraud and the grant ought to be revoked.

20. For the Petitioners, it was conceded that WMM was the deceased's son with Mary Gaiti Mugambi. However, it was argued that he had been adopted by his mother's German husband hence changing his name to WMM thereby severing all ties with the deceased. The Petitioners highlight the failure by WMM and his mother to give evidence. Similarly, it was submitted that Fiona's evidence regarding her parentage was uncorroborated since her mother did not testify, more particularly to explain the existence of and anomalies in the two birth certificates in Fiona's name, and the fact that she was not named after her paternal grandmother as per Kikuyu custom. It was asserted that Fiona did not present any tangible proof of having been sired by the deceased or relating with him as a father. Further, that her claims were displaced by the Petitioners' evidence through James Ngure Kanyara, which among other things reiterated the fact that Fiona was listed as a beneficiary and child of her alleged step father Steve Lawrence Kim Njoroge and benefitted from his estate vide Succession Cause No.1317 of 1999.

21. The Petitioners contend that neither Fiona nor WMM related with the deceased during his lifetime and that none of them were proper dependents of the deceased under Section 27 and 28 of the Law of Succession Act. In closing, it was pointed out that the Petitioner's evidence on key issues was not rebutted as WMM, his mother and Fiona's mother failed to testify. The court was therefore urged to dismiss the application to revoke the grant made in favour of the Petitioners.

22. The court has considered the respective evidence and submissions by the parties. First, there is no dispute that the deceased sired WKN alias WMM, in the course of a relationship with Mary Gaiti Mugambi which nevertheless did not result in marriage. And that by a deed poll dated 4th March 2008 the son's name was changed from WKN to WMM when the subject was still a minor, having been born on 17th September 1997. There is no dispute that Fiona is the daughter of Mercy Njeri Ngoima born on 26th July 1990 and that the said mother subsequently got married to Steve Lawrence Kim Njoroge (hereafter Njoroge) on 11.3.98; that the said person jointly with his wife took up the parental responsibility over Fiona and her siblings. After his death, Fiona's mother solely shouldered the burden of raising and educating her.

23. It appears that by 13th January 1999 when Njoroge died two other children namely PMN and AOM had been born to the couple either prior to and/or after the 1998 marriage; that upon Njoroge's demise a year into the marriage with Mercy Njeri Ngoima, the wife filed Nairobi Succession Case No. 1317 of 1999, naming Fiona and her two siblings as the children of the deceased. A certificate to confirm the grant therein issued on 8th December 2004 and the respective shares of the estate were distributed to the widow and her three children. When the deceased herein died, his mother (now deceased) and siblings petitioned for a grant which issued on 9th January 2014 in Nairobi Succession Cause No.2239 of 2013. Mary Gaiti Mugambi together with James Ndungu Kanyara had also filed Succession Cause No.1689 of 2013 in respect of the same estate, the former acting on behalf of WMM then a minor and that following an objection filed by Fiona, a grant issued by consent to Mary Gaiti Mugambi and Fiona on 21st July 2014.

24. The twin issues falling for determination are whether Fiona and WMM are children of the deceased and entitled as beneficiaries/heirs and administrators of the estate of the deceased, and secondly, whether the grant issued to the Petitioners in Nairobi Succession Cause 2239/13 is liable to be revoked on account of the Petitioners' failure to disclose the existence of the two disputed children and/or to obtain their consent and to involve them in the cause. Section 76 of the Law of Succession Act Provides in subsection (a) and (b) which are pertinent to this case, that:

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)

.....”

25. On the first issue, and in so far as WMM is concerned, there was no dispute that he was a biological son of the deceased, hence his initial name WKN incorporating his father's name. The deed poll to change his name was executed on his behalf while he was a minor and despite there being a possibility that this was occasioned by his mother's marriage to a German man, this did not change the blood relationship to the deceased herein, nor does it matter that WMM was not being maintained by the deceased in his lifetime or at the time of his death. Under the definition of a dependent in Section 29 Law of Succession Act any child of the deceased is a dependent whether or not maintained by the deceased immediately prior to his death and pursuant to the provisions of Section 38 of the Law Succession Act the net estate of an intestate devolves upon his child or children surviving such deceased. This provision becomes clearly relevant in the determination of preference to be given to different dependents, *inter alia* under Section 66 of the Law of Succession Act.

26. The deceased in this case never married. His surviving child or children would ideally be ranked first in priority in terms of Section 66(b) of the Law of Succession Act so far as the administration of his estate is concerned. Section 26 to 27 of the Law of Succession Act that has been cited by the Petitioners apply where an application has been made by a dependent for provision to be made for him out of the estate of the deceased. WMM has not made such application to this court and the considerations in section 28 of the Law of Succession Act cannot apply to him. His mother had applied jointly with one of the deceased's brothers for a grant in **Nairobi Succession Cause No. 1689 of 2013**. In the said petition it was made clear that WMM's mother was seeking the grant on behalf of WMM then a minor. Although WMM has since become an adult but has not been substituted there is no doubt that the mother holds the grant issued in that cause on WMM's behalf. Since becoming an adult WMM has not renounced his right to the grant, the change of name notwithstanding.

27. I find that on the material before the court, the concession by the Petitioners and the law, WMM is indeed a child of the deceased for purposes of this succession cause and the Petitioners ought to have included him in their subsequent petition as required by the provisions of section 51(2)(g) of the Law of Succession Act and Rule 7(e) of the Probate and Administration Rules. Secondly, that the Petitioners being persons entitled in lower degree and/or priority to WMM ought to have given notice of their petition and or sought WMM's consent thereto as required under Rule 26 of the Probate and Administration Rules.

28. Unfortunately, in my considered view, the same cannot be said of Fiona. Her claim to be a child of the deceased was premised on verbal assertions and certain documents. The latter included the chief's letter dated 22nd April 2013 being annexure **FWN3** asserting that she and WMM were children of the deceased. The said letter was issued by the chief's office Githiga location, Githunguri while the letter dated 30.1.2013 identifying the three Petitioners as having survived the deceased was issued by the chief or assistant chief Matuguta sublocation, Githunguri. The latter purports that the deceased hailed from Matuguta sublocation Githiga location, Githunguri while the former stated that the deceased hailed from Githiga sublocation of Githiga location, Githunguri. Each signatory purported to know the deceased and the different persons surviving him.

29. Naturally, the varying contents of the two letters cannot be equally true. However, contrary to assertions at paragraph 11 of Fiona's supporting affidavit, the further letter dated 17th April, 2013 by the Deputy County Commissioner Githunguri (annexure **FWN 4**) on plain reading, did not revoke the Petitioners' letter dated 30.1.2013 but a different letter, allegedly issued on 1st February, 2013, apparently by the same author. Thus, while it is true that the letter dated 30.1.2013 was the basis of the grant to the Petitioners herein, there is no letter or evidence of its revocation. It seemed imperative, given the discrepancies in the chiefs' letters used in **Succession Cause Nos. 1689/2013 and 2239/2013** that at the very least, the authors be summoned as witnesses to shed light on the contents or that Fiona tendered other persuasive evidence of her relationship to the deceased.

30. The next piece of Fiona's documentary evidence is also riddled with mystery. Admittedly the birth certificate serial No. [...] relied on by Fiona (annexure **FWN 1** to her supporting affidavit) indicates that the deceased was Fiona's father. However, the Petitioners countered this by tendering another birth certificate in Fiona's name, which did not reflect a father's name and was crossed out in the space provided for the father's name. This birth certificate (annexure **B** to the affidavit of James Ngure Kanyara) bears serial No. [...] Pressed to comment on it during cross-examination, Fiona simply stated that she could not explain the discrepancy in the details therein and only her mother could explain the process used to include the deceased's name in the second birth certificate. Indeed her mother's affidavit filed on 27th March, 2015 purported that in 2003 the deceased had requested her to "rectify" the birth certificate (presumably initial birth certificate in

Fiona's name) allegedly in order to include the deceased's name and that the rectification was done. Hence a second birth certificate issued. These were key depositions, but the said mother did not attend court as a witness to make these assertions and to be cross-examined thereon.

31. The existence of two different birth certificates in Fiona's name was an important question upon which Fiona's case stood or fell. For Fiona's part, upon being confronted with the petitioner's replying affidavit to which the second birth certificate was annexed as annexure 'B' she did not counter it in any way. She could have but did not call the relevant government officer from the registry of births to testify concerning which was the genuine and / or current birth certificate. Nevertheless, Fiona, did not dismiss the annexure 'B' as a forgery, a line adopted in her mother's depositions despite conceding existence of two birth certificates and in Fiona's submissions.

32. Concerning her given name, Fiona did concede that under Kikuyu custom as the daughter to the deceased, she would have been named 'Nyathira' after her paternal grandmother and not her current middle name 'Wangui', the name of her maternal grandmother. The patrilineal naming system among the Kikuyu is a notorious fact even if as asserted by the applicant's counsel, no expert evidence was led on that score. During cross-examination, however, Fiona herself conceded this system in so far as her name was concerned by stating that:

"Yes, I am named Wangui – middle name – but my grandmother is Eunice Nyathira. I am a Kikuyu and should have been named Nyathira. I accepted names given by my mother... when I applied for my ID card I gave ... of my grandfather's name – Ngoima, not any of my father's."

33. In re-examination she asserted that she could not tell why she was not named after the paternal grandmother and her mother could explain that. She did not because she did not testify.

34. The rest of Fiona's evidence is comprised of verbal assertions that the deceased was her father; that as a young child, she visited him at KEMRI; got a present or two from him and attended his funeral. Her mother's affidavit contains similar depositions. The mother, Mercy Njeri Ngoima would have been the best witness to testify on the circumstances in which she and the deceased begat Fiona. Moreso as Fiona was born after the alleged 'cohabitation' between the mother and the deceased had ceased and they had gone their separate ways. The dates or period of the relationship between the two, their 'cohabitation' or conception of Fiona is unknown. These are matters that a mother stands best placed to testify about. Section 112 of the Evidence Act states that:

"In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him."

35. All that Fiona could say when pressed to the wall during cross-examination was that:

"Mother told me that the deceased herein was my father. I used to visit him and grandmother."

However, she did neither called any witness to corroborate these matters going back to her childhood, nor produced a single photograph taken with the deceased at any time. The untested depositions of her mother did not suffice. Fiona further admitted that after the death of Njoroge in 1999 her mother raised her and siblings and educated her to university level without the deceased's support and that she never sought such support. She alluded to financial help by the deceased while in university by way of MPESA payments but did not tender any proof. Fiona admitted that prior to his death, the deceased was ailing for a long period but that despite being an adult in that time, she never visited him, and did not raise any objection when his obituary notice omitted her name. The unproven assertion, emphasized in her evidence, that she attended the funeral of the deceased, without more adds no weight to her case.

36. According to James Ngure Kanyara, he first met Fiona in court and he denied she was a child of the deceased even while admitting that WMM was a son to the deceased; and that Mercy Njeri Ngoima was also from Githiga village (location). He pointed out that Fiona was listed as a daughter of the late Njoroge and inherited from his estate. There is no evidence to support Fiona's assertion that the deceased and his family recognized her as a daughter to the deceased. In urging her case through submissions, Fiona's advocate has liberally referred to material in the mother's affidavit to support the key planks of her evidence. The dispositions in the said affidavit by Mercy Njeri Ngoima consist of no more than untested evidence as the mother did not avail herself as a witness and was therefore not cross-examined. Thus, very little weight if any can be attached to these depositions. Besides, it does appear that the sum total of Fiona's evidence has been thoroughly shaken by the material and evidence supplied by the Petitioners.

37. Under section 107 and 108 of the Evidence Act the burden of proving that Fiona was the deceased's child therefore rightful heir herein lay with Fiona. Reviewing all her evidence, the court does not find that she has discharged the burden on a balance of probabilities. The fact of her appointment as an administrator in **Succession Cause No. 1689 of 2013** did not in any way establish Fiona as such as indeed the consent therein did not involve the administrators in **Succession Cause No. 2239 of 2013**. On all accounts, Fiona is a stranger to the estate of the deceased. Moreover, her co-administrator in that case cannot continue in that capacity when WMM has attained the age of majority and can act in his own behalf.

38. On the second issue, the court has already found that the Petitioners erred by failing to disclose the existence of WMM and to include him in **Succession Cause No. 2239 of 2013**. The proven facts bring the case within the ground for revocation in section 76(b) of the Law of Succession Act. The concealment of a material fact from the court is violation of section 51(2)(g) of the Law of Succession Act. The Petitioners were evidently operating under the mistaken notion that WMM had ceased to be the son of the deceased following his mother's alleged marriage to a German man and the change of his surname to WMM.

39. In the circumstances the grant issued to the Petitioners herein on 9th January, 2014 is hereby revoked. Given the evidence and findings of the court in respect of Fiona Wangui Ngoima and WMM *alias* WKN, the grant issued to Fiona is liable to be revoked. Secondly, the trustee role played previously by Mary Gaiti Mugambi has been overtaken by events and the grant issued to her on WMM's behalf rendered useless

and inoperative in terms of section 76(e) of the Law of Succession Act, her son having become an adult. The court will therefore also revoke the grant issued to Fiona and Mary Gaiti Mugambi on 21st July 2014. A fresh grant will issue forthwith in the joint names of WMM *alias* **WKN** and the deceased's two siblings **James Ngure Kanyara** and **Lucy Wambui Kanyara**. There is liberty to apply for confirmation thereof before the expiry of six months considering the age of the dispute.

Parties will bear own costs.

SIGNED AND DELIVERED ELECTRONICALLY ON THIS 25TH DAY OF SEPTEMBER 2020

C. MEOLI

JUDGE