



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 3083 OF 2013

IN THE MATTER OF THE ESTATE OF TONKEI J

EREMIAH alias JEREMIAH KAURRAI KOIN TONKEI (DECEASED)

ANN WANJIKU WAINAINA.....OBJECTOR

VERSUS

ELIZABETH KAURRAI TONKEI.....1ST PETITIONER

DENNIS TONKEI KAURRAI.....2ND PETITIONER

AND

PRISTINE DEVELOPMENTS.....1ST INTERESTED PARTY

EVERGREEN DEVELOPMENTS LTD.....2ND INTERESTED PARTY

RIARA GROUP OF SCHOOLS.....3RD INTERESTED PARTY

RULING.

1. Ann Wanjiku Wainaina the applicant herein has come before this court vide summons for revocation of grant dated 20th April, 2015. She has asked this Court to revoke a grant issued to Elizabeth Kaurrai Tonkei and confirmed on 13th November, 2007 by the Senior Resident Magistrate's Court at Kajiado.

2. She set out her reasons for so applying in the application, the affidavit in support and the written submissions filed herein. But the major grounds given are:-

a) That the proceedings to obtain the grant were defective in substance

b) That the Grant was obtained fraudulently by making false statement of fact or concealment of something material to the case.

It was her prayer that all transactions by the administrators be declared void and that the administration of the estate be granted to her.

3. From the averments in her affidavit sworn on 20th April, 2015, she grounds her objection on reasons that the proceedings to obtain the grant were defective in substance as the Senior Resident Magistrate lacked jurisdiction to entertain a matter where the gross value of the estate exceeded Ksh.100,000/= thus rendering the proceedings a nullity. Secondly, that the petitioners approached the court seeking letters of administration *ad colligenda bona* which is limited to collecting monies due and owing to the estate yet they were granted a full grant.

4. Thirdly, that the petition to obtain the grant was full of falsehoods as the letters of administration issued on 15th November, 2005 were issued only to Elizabeth Kaurrai Tonkei but the petitioners' fraudulently swore that it was made to both of them and was therefore confirmed to Elizabeth Kaurrai Tonkei and Dennis Kaurrai Tonkei.

5. The objector contended that there was substantial concealment of facts in the application for letters of administration intestate. That the petitioners concealed a material fact that the deceased was survived by other dependants namely; Anna Wanjiku Wainaina – wife (objector),

Mercy Tonkei-Daughter, David Lantei Kaurai-son, Kaurai Parkinyalo Martin-son, Linet Nkini Tonkey-Daughter, Kevin Lila Kaurai – Son, all of whom were excluded from the list of beneficiaries. Further, that no consent was obtained from herself or her children as alleged in the petition and the grant indicates that it emanates from the High Court of Kenya in Nairobi which is untrue, in an effort to conceal fraud rendering it a nullity.

6. The applicant questions the procedure undertaken to acquire the confirmation of grant in that it was applied for and granted on the same day of 13th November, 2007. The orders had the effect that the parcel title number Kajiado/Kaputei-North/74, after payment of debts, would be shared equally among the beneficiaries excluding the applicant and her children. The said property was transmitted to the petitioners herein and was later subdivided into four parcels and sold to Riaru Group of schools Limited - Kajiado/Kaputei-North/37788 and Kajiado/Kaputei-North/37789, Pristine Developments Limited - Kajiado/Kaputei-North/37790 and Evergreen Developments Limited - Kajiado/Kaputei-North/37991. The applicant affirms that she was the 1st wife to the deceased but the petitioners and the deceased's relatives have conspired to deny her and her children their entitlement.

7. The applicant filed a supplementary affidavit in support of the summons for revocation sworn by Kaurai Parkinyalo Martin dated 5th October, 2015 and another one by Susan Wangui of even date. Kaurai Parkinyalo Martin claimed to be a son of the deceased and the applicant born on 31st July, 1979. He echoed her sentiments that he had two sisters and two brothers all children of the deceased with whom they lived together as a family. He averred that the deceased provided for them as a family and fully exercised his parental responsibility over them. He swore that he lives in Kitengela where they had been living with the deceased before his demise.

8. Susan Wangui deposed that she has been living in Kitengela since 1974 and came to know the applicant, deceased and their five children in 1990 when they moved there. She averred that she and the applicant joined a self-help group where they would interact and her businesses in Kitengela also allowed her to interact with the deceased. She deposed that the deceased's health deteriorated in the 1990s and he was confined to their home in Kitengela. She did not attend his funeral when he passed on but was aware of the controversy in the family at the time. She affirmed that the applicant and the deceased had children and raised them together as husband and wife.

9. In opposition to the summons for revocation of grant, several affidavits were sworn by the petitioners and the interested parties herein. The 1st and 2nd interested parties jointly filed their grounds of opposition dated 8th July, 2015. They challenged the application and the prayers sought as being unmeritorious within the provisions of the law and ought to be dismissed.

10. The 3rd interested party Riaru Group of schools filed a replying affidavit dated 18th September, 2015 through its Director and Chairman Mr. Gachukia. He deposed that he is a purchaser for value and in good faith after purchasing Kajiado/Kaputei-North/37788 and Kajiado/Kaputei-North/37789 from the administrators of the estate of the deceased. He affirms that he conducted a search before purchase and confirmed that the property was registered in both administrators' names. That he conducted all due diligence necessary before execution of the agreement, purchase and transfer.

11. The third party denies any knowledge of facts leading to the issuance of the confirmation of grant and avers that the same is immaterial in this circumstance as his titles were acquired lawfully and in good faith. He further stated that the interested party was guilty of laches after moving to court after transfer of the properties had been effected and as such should not be rewarded for their unconscionable failure. It is his deposition that since the issuance of confirmed Grant has not been challenged all his title documents are valid. He averred that the summons for revocation of grant is an abuse of the court process and should be struck out with costs.

12. In a further response to the summons for revocation Elizabeth Kaurai Tonkei filed a further replying affidavit dated 19th October, 2015. She challenged the accounts given by the supplementary affidavits in support of the summons terming them as false, malicious and contradictory. She further contested the authenticity of the various birth certificates supplied in support of the application. She averred that the applicant had failed to provide proof of marriage between the deceased and herself and had also failed to provide any legal interest known in law. She concluded by stating that all transactions in regards to the estate of the deceased complied with the law and were therefore valid.

13. This Court gave directions for the Objector's application to proceed by way of *viva voce* evidence. The parties were also directed to file and exchange witness statements. At the hearing the Objector called six witnesses, the Petitioners called three witnesses and the interested parties called two witnesses to testify.

14. At the trial, the objector adopted and reiterated the averments sworn in the affidavits in support of her application. Further evidence adduced was that after the death of her husband, the deceased's relatives became hostile towards her accusing her of being the cause of his death. They barred her from participating in the funeral arrangements all together. She took several steps to challenge their actions but all was fruitless. It was not until 2013 that she saw advertisements for the sale of her husband's property. She was not aware that a grant had been issued.

15. The objector maintained that she never received any notification about the petition from her co-wife and was not aware that the same had been filed. On conducting an official search it was found that the properties had been sold to third parties. She perused the court file to determine how the grant was issued. It is her case that the process of obtaining the grant was irregular in many instances and the process of sub division and selling of the properties to third parties is therefore voidable and should be nullified. She prayed that the grant be revoked/annulled.

16. The objector's next witness was Kaurai Parkinyalo Martin who testified that the deceased was his father and the objector his mother. It was his testimony that the deceased exercised his parental responsibility until his death. He produced his national identity card to affirm his identity.

17. David Gacheru Ndemo testified for the objector. He testified that he was a friend to the family of Annah Wanjiku Wainaina having known them in 1983. He stated that he knew the deceased and could identify his children with the objector although he did not know their names.

18. Another account for the objector's case was from Susannah Wangui whose testimony was that she knew the objector in 1990 when she resided in Kitengela. She stated that she had been living in Kitengela since 1974. It was her testimony that the objector and the deceased were living as husband and wife. She claimed to have no knowledge of the deceased's other family.

19. David Lantei Kaurei testified in support of the objector's case. It was his testimony that he was a son to the deceased and the objector. He stated that he applied for and was issued with a birth certificate after the demise of his father due to the need to obtain a passport. He produced a copy of his National Identity card as evidence in support.

20. The sixth witness for the objector was Mercy Njeri Tonkei. It was her testimony that she was a daughter to the deceased and the objector. She produced a copy of her National Identity card as evidence. She testified that her birth certificate indicated that the deceased was indeed her father. That her application for her birth certificate was made before the deceased passed on. She also produced photographs of her graduation ceremony which was attended by the deceased and the objector. That the deceased and his siblings were involved in dowry negotiations on her behalf at the time she was getting married. She affirmed that the deceased was her father although she was aware that he had another family. On her application for a birth certificate, she testified that the application was done in order to acquire a passport.

21. The testimony of the 1st petitioner was to the effect that she had a legal right to apply for and be issued with the letters of administration. She denied allegations that the objector was a wife to the deceased as she was not aware of the objector's existence. She asserted that all funeral arrangements were made by her family in exclusion of the objector who had never been in the picture and the assertions that the objector was barred from participating in the funeral arrangements were denied.

22. The 1st petitioner stated that when the family needed financial assistance to clear the liabilities of the deceased, they applied for letters of administration *ad colligenda bona*. This resulted in the court granting letters of administration and the grant was confirmed in 2007. The property was transmitted to the administrators and later sold to the interested parties. During the process due process was adhered to. The grant was obtained legally with all material facts disclosed to the court.

23. Allan Gachukia a Director at Riara Group of schools and Leonard Itham a Director at Pristine Development testified for the interested parties. It was their testimony that all due diligence was undertaken before the purchase of the properties in issue. They conducted official searches as required and determined that the properties were registered in the names of the petitioners herein as the proprietors. They did not sell the properties as administrators but as vendors and the interested parties as purchasers for valuable consideration with no notice. The interested parties went further to even request for a certificate of confirmation of grant before purchase which the administrators availed.

24. They were not aware of any issues or discrepancy in acquisition of the grant. The agreements were executed as required and transfer documents executed in accordance with the legal provisions. The title deeds were issued later on. It is their case that they had no knowledge of any dispute as to the suit property. The property had no encumbrances restricting any transactions or transfer. Their title deeds are therefore valid. They conducted due diligence and acted in good faith in purchasing the property.

25. I have read and carefully considered pleadings, the testimonies and the submissions from the parties to this matter. The issues to be decided are:-

- I. whether the Objector was a wife to the deceased and her children dependants within the meaning of the Succession Act;
- II. whether the proceedings to obtain the grant were defective in substance.

I. Whether the Objector was a wife to the deceased and her children dependants within the meaning of the Succession Act;

26. A ground raised by the objector is that the petitioners' failed to disclose to the court that there were other beneficiaries entitled to a share of the estate of the deceased. The petitioners on the other hand allege that the applicant and her children are not beneficiaries to the estate of the deceased as provided under the Law. The question is therefore whether the objector was a wife to the deceased and her children dependants within the meaning of Section 29 of the Succession Act. Under Section 29 the meaning of dependant for the purposes of that part is given as follows:

"Dependant" means-

"a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;

b) such of the deceased's parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters; as were being maintained by the deceased immediately prior to his death; and c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death."

27. Is the applicant a wife to the deceased? At the hearing, the objector testified that she was married to the deceased. She did not tender any evidence of the manner in which they were married or the formalities that accompanied the specific type of marriage that she alleges to have contracted with the deceased. She also did not provide any independent witnesses who witnessed the ceremony attendant to their marriage if there was any.

28. In the absence of such evidence, the only recourse would be to presume marriage between her and the deceased. The objector said that she had lived at Kitengela from 1990 with the deceased. Prior to that, they lived in Ongata Rongai for over 10 years. That was contested. She did not provide any proof of the alleged cohabitation. She called two witness who testified that she had been their family friend and

neighbour since 1983 and 1990 respectively in Kitengela.

29. In 1990, the deceased was married to the 1st petitioner. Photographs were produced of the deceased and the objector's daughter at a graduation ceremony. Handwritten notes were also produced as evidence of the relationship between the deceased and the objector. However, this is not sufficient proof to form a basis for the presumption of marriage by cohabitation. I find that the testimony of the objector's witnesses lacked in quality of the nature of cohabitation. I therefore find no basis to deem her as a wife of the deceased by dint of cohabitation.

30. At the hearing of this objection the objector and her witnesses strongly agitated for recognition of her children as children of the deceased. The Birth certificates in evidence, indicated the name of the deceased as the father of her children. The petitioners on the other hand assert that they have no knowledge of the objector's claims and were never introduced as such. The petitioners also questioned the authenticity of the said birth certificates.

31. Counsel for the 1st petitioner prayed for Summons to be issued to the Registrar of Persons to shed some light on the issue. The Principal Registration officer department of registration of persons filed a report before this Court and appeared to give evidence on the Report dated 11th November, 2016.

32. Mr. Shummary Malleon the Principal Registrar of persons appeared in Court and produced a report on his findings. It was his testimony that he was tasked to authenticate four birth certificates serial Nos [xxxx], issued in Kajiado Civil Registrars Office. On conducting both manual and computer based search of the records, his findings were as follows:

i. Mercy Njeri – 20218: First registration of birth on 5/1/1972 with particulars showing the name of the mother as Hannah Wanjiku Thuo, Name of Father as Thuo Ikonya and place of birth being Gitiha Sub Location.

Late registration of birth by Hannah Wanjiku Thuo on 02/07/2001 with particulars showing the name of mother as Hannah Wanjiku Thuo, name of father as Jeremiah Kaurai Tonkei and place of birth as Ongata Rongai sub location.

ii. David Lantei – 20217: First registration by Hannah Wanjiku Thuo on 13/09/1976 with particulars showing the name of mother as Hannah Wanjiku Thuo, Richard Wainaina Njoroge was the father and place of birth as Alpha maternity home.

Late registration of birth by Hannah Wanjiku Thuo on 02/07/2001 under the following particulars; Name of mother as Hannah Wanjiku Thuo, Name of Father as Jeremiah Kaurai Tonkei and place of birth as Kitengela sub location.

iii. Martin Parkinyalo – 275635: First registration by Hannah Wanjiku Thuo on 19/02/1979 under the particulars; Date of birth 01/09/1979, Name of child not given, Hannah Wanjiku Thuo as mother, Name of father not given, and place of birth as Thika District Hospital.

Late registration of birth by Hannah Wanjiku Thuo on 12/09/2006 under the following particulars; Date of birth 31/07/1979, Name of mother as Hannah Wanjiku Thuo, Name of Father as Jeremiah Kaurai Tonkei and place of birth as Kitengela town.

iv. Linnet Nkini – 426693: First registration by Anna Wanjiku Thuo on 13/03/1987 under the particulars; Name of child not given, Anna Wanjiku Thuo as mother, Name of father William Musere Mishisi, and place of birth as Fatima Maternity Mbagathi.

Late registration of birth by Anna Wanjiku Wainaina on under the following particulars; Date of birth 12/2/1987, Name of mother as Ann Wanjiku Wainana, Name of Father as Jeremiah Kaurai Tonkei and place of birth as Kitengela town.

33. It was his opinion from the report produced that the variations in dates or months of birth, were done deliberately in an effort to frustrate any manual search of the records based on date of birth. He concluded that subsequent registration was done whilst the first/original registration was still in force and was thus invalid. The birth certificates were therefore cancelled due to double registration.

34. Summons was also sought and issued to the Principal Registration officer department of registration of persons to testify to the authenticity of National cards bearing the following numbers: [xxxx].

35. Gladys Naliaka Soita appeared in court and produced a report dated 11th November, 2016 in which her findings were that:

i. ID No. [xxxx] – was registered to Anna Wanjiku Wainaina. Particulars showed that Peter Thuo was her father and Mary Njeri was the mother.

ii. ID [xxxx] – registered to David Lantei Kaurai. In his original application done neither the mother's nor father's names were entered. In 1978, the registration forms used did not contain a slot for the parents' names. It was later amended to include Jeremiah Lantei as father.

iii. ID [xxxx] – registered to Parkinyalo Martin. The mother's name was given as Anna Wanjiku Wainanina and the father's name as Jeremiah Tonkei. The Information was given by the area chief

36. From the foregoing, I note that the certificates of birth were obtained after the deceased died. According to the report from the Registrar of Persons, the certificates were cancelled due to double registration. As such the certificates cannot be considered as evidence in this matter by virtue of being invalid. I am, however, alive to the fact that a certificate of birth is not adequate proof of paternity.

37. From the report of the Director of National Registration, I could not conclusively determine the paternity of the objector's children, as the records indicated during the registration of a National Identity Card are not sufficient proof of paternity. The objector's children testified that the deceased exercised his parental responsibility over them. However, there is no evidence to support this claim of dependency.

38. From the foregoing evidence, I have no hesitation in finding that the objector was not a wife of the deceased and her children were not dependants within the meaning of section 29 of the Succession Act. There was therefore no concealment of facts of their existence from the court because their existence was not relevant to the proceedings in the estate of the deceased.

II. Whether the proceedings to obtain the grant were defective.

a. Jurisdiction

39. A salient issue raised by the objector is that the grant made on 13th November, 2007 to the 1st and 2nd petitioners' at Kajiado SRM's court in **succession cause number 20 of 2005** should be annulled on the ground that it was made by a court lacking in jurisdiction. She alleges that the value of the entire estate of the deceased was in excess of

Kshs.100, 000/= and secondly, that the 1st petitioner deliberately failed to disclose the worth, or value of the estate and the objector believes that this was done to deny the court the opportunity to know the exact value of the estate.

40. I have perused the proceedings in the Senior Resident Magistrate's court. It is the objector's contention that the 1st petitioner failed to disclose the true worth of the estate of the deceased. No evidence of a valuation report was tendered to back the objector's claim. From the agreements supplied by the interested parties however, it is clear that the properties were purchased at a significantly higher value than Kshs. 100,000/= after the grant was confirmed.

41. Riara Group of schools purchased Parcels Kajiado/Kaputei-North/37788 and Kajiado/Kaputei-North/37789 at a consideration of Kshs. 12,500,000/= and Kshs. 6,300,000/= respectively. Pristine Development Limited purchased parcel no. KJD/Kaputei-North/37790 at a consideration of Kshs. 5,000,000/= while Evergreen Development Limited purchased parcel no. KJD/Kaputei-North/37791 at Kshs. 7,500,000/=. It is therefore evident that, although the value of the property was not disclosed, it far exceeded Kshs. 100,000/= and the Succession Cause should have been filed in the High Court as the Magistrates Court in Kajiado lacked jurisdiction.

b. Procedure

42. The objector also complained that petitioners approached the court seeking letters of administration *ad colligenda bona* which is limited to collecting and preserving monies due and owing to the estate, yet the court granted them a full grant. Further, that the letters of administration issued on 15th November, 2005 were issued only to Elizabeth Kaurrai Tonkei but the petitioners' fraudulently misled the court to believe that the grant was made to both Elizabeth Kaurrai Tonkei and Dennis Kaurrai Tonkei. It was therefore confirmed to the two of them thus making the whole process flawed.

43. The Succession Act (Cap 160) clearly outlines the procedure to be followed in obtaining and confirming a grant of representation. On perusal of the record from the subordinate court I find mischief in the manner in which the grant was issued. An application for a limited grant of letters of administration *ad colligenda bona* for purposes of collection and preservation of the estate is entrenched under rule 36 of the P and A rules which provides that:

“where owing to special circumstances the urgency of the matter is so great that it would not be possible for the court to make a full grant of representation to the person who would by law be entitled thereto in sufficient time to meet the necessities of the case, any person may apply to the court for the making of a grant of administration *ad colligenda bona* defunct of the estate of the deceased”.

44. After the application was made, the 1st petitioner did not make another application for letters of administration intestate. The letters issued on 15th December, 2005 were only limited to collection and preservation of the estate of the deceased. From the record, the same letters which only granted the 1st petitioner limited administrative powers, were used to confirm the grant to the 1st and 2nd petitioner as administrators of the estate. The correct procedure was not therefore followed. This in effect renders the process undertaken by the petitioners to obtain the confirmed grant flawed.

c. Purchaser's Interest

45. The final issue is whether the interests of the purchasers herein 'the Interested Parties' are protected. The interested parties deposed that they have a proprietary interest in the aforementioned suit properties since they bought them in good faith and gave consideration in exchange thereof. On 10th November, 2011 Kajiado/Kaputei-North/37790 was transferred to Pristine Development at a consideration of Ksh. 5,000,000/=. On 8th March 2012 Kajiado/Kaputei-North/37791 was transferred to Evergreen Development Limited. Riara Group of Schools purchased Kajiado/Kaputei-North/37788 and Kajiado/Kaputei-North/37789 at a consideration of Kshs. 12,500,000/= and Kshs. 6,300,000/= respectively, facts which have been admitted by the petitioners.

46. The petitioners further stated that they used part of the money to clear the liabilities left by the deceased and in particular the charge to co-operative Bank. The 1st and 2nd Interested Party however did not produce their sale agreements to the purchase of the properties relied upon in their submissions.

Section 93(1) of the Law of Succession Act provides:

“All transfers of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act.”

Section 24 of the Land Registration Act, 2012. No. 3 of 2012 provides:

“Subject to this Act—(a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto...”

47. Although Section 93 as read with Section 24 as highlighted gives a blanket protection to purchasers, Courts have applied it only in cases where according to the circumstances at hand, the purchaser can be rightly deemed to be ‘a bonafide purchaser for value without notice.’

In JACINTA WANJA KAMAU V ROSEMARY WANJIRU WANYOIKE AND ANOTHER (2013) eKLR where the appellant therein unsuccessfully sought protection under Section 93, the Court of Appeal sitting in Nyeri stated:-

“Before the appellant could seek protection as a purchaser under Section 93 of the Act, she had first to prove that she is a purchaser.....”

48. In JANE GACHORA GATHETHA VS PRISCILLA NYAMIRA GITUNGU AND ANOTHER (2006) EKLR where a purchaser claimed that he was not aware of, and was not party to the fraudulent dealings with the title in issue and was therefore not only protected under Section 93(1) of the Law of Succession Act but also Section 143 of the Registered Land Act (now repealed) the Court of Appeal in Nyeri elucidated:-

“We think with respect, that there is a fallacy in invoking and applying the provisions of Section 93(1) of the Law of Succession Act and the Superior Court fell into error in reliance of it. The section would only be applicable where firstly there is a transfer of any interest immovable or moveable property. Kabitau had no interest in plot 321 or any part thereof and therefore he could not transfer any. A thief acquires no right or interest which is transferable in stolen property. The transaction would be void ab initio and the property is traceable.”

49. In this instant case, the objector has not refuted claims that the interested parties were purchaser. The 1st, 2nd and 3rd interested parties have established that they indeed purchased part of the suit property. Alluding to the confirmation of grant issued, the presumption was that the petitioners did have a right to administer the estate to the benefit of the beneficiaries. They however should not have sold the estate without leave of the court since some of the beneficiaries were minors. So that although, the administrators obtained consents to the grant, this Court is not satisfied that they obtained authority to sell any part of the deceased's estate from all beneficiaries.

50. However, this Court finds that the 1st, 2nd and 3rd Interested Parties are protected by the provisions of Section 93 of Law of Succession Act. They have proved from the presented Agreement for Sale that they are bona fide purchasers for value without notice of defective title. The Administrators had a confirmed grant and therefore had the lawful authority to sell the said properties that were transferred to the interested parties and titles were issued to them. The protection would however not extend to purchasers who bought a stake belonging to a beneficiary who was fraudulently locked out of the estate.

51. Under section 76 of the Law of Succession Act this court has wide and unfettered discretion to annul or revoke a grant whether or not confirmed at any stage on the following grounds:-

(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 has ordered or allowed; 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.”

52. From the foregoing, there is no doubt that the proceedings leading up to the issuance of the grant on the 13th November, 2007 were defective in form and substance as was the confirmation of the said grant and ought to be revoked.

However, I'm alive to Section 73 of the Probate and Administration Rules which provides that:

“73. 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.”

53. The object of the court is to do substantive justice. It is my considered view that substantive justice will be done by the court giving the petitioners time to regularize the proceedings. It is for that reason, that I invoke the inherent powers of this court granted under Article 159 of the Constitution, Section 76 of the Law of Succession Act and Section 73 of the Probate and Administration Rules and make the following orders.

Orders:

1. That the objector is not a wife and her children were not dependants to the deceased herein.
2. That the petitioners are given 6 months from the date hereof to regularize the process by filing for Letters of Administration Intestate afresh in the appropriate court.
3. That this being a family matter there shall be no order as to costs. It is so ordered.

SIGNED DATED AND DELIVERED IN OPEN COURT THIS 22ND DAY OF JANUARY 2019.

L. A. ACHODE

HIGH COURT JUDGE

In the presence of Mr. Githuka Advocate for the Objector

In the presence of Mr. Kinuthia H/B for Munyi Advocate for the 1st and 2nd Petitioners

In the presence of M/S Leyla H/B for Mr. Kiche Advocate for the 1st and 2nd Interested parties

In the presence of Mr. Kinuthia H/B for Mr. Nyachoti Advocate for the 3rd interested party.