



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 4 OF 2018 (FORMERLY CHUKA 418 OF 2015)

IN THE MATTER OF THE ESTATE OF M'MBOGORI KIARA Alias MBOGORI KIARA

EDITH NKATHA MBOGORI.....PETITIONER

VERSUS

GEODFREY KIRIMI MBOGORI.....OBJECTOR

R U L I N G

1. *M'Mbogori Kiara alias Mbogori Kiara ("the deceased")* died in the year 1968. At the time of his death, he was domiciled in Kithirune Location. According to the letter of introduction by the Chief of Kithirune East Location dated 21st July 2008, the deceased left behind *Muthoni M'Mbogori (widow-deceased) and Edith Nkatha (daughter)* surviving him.
2. On 23rd July 2012, *Edith Nkatha ("the petitioner")* petitioned for letters of administration intestate in *Chuka Spm's Court, Succession Cause No, 221 of 2012* and listed *Muthoni M'Mbogori (wife-deceased), Edith Kirimi Nkatha Mbogori (daughter), Ian Kirimi (grandson), Muthiuri Josphat Kiara-Purchaser* as the only beneficiaries. She also listed *Abothuguchi/Kithirune/602* measuring 1.57 ha as the only property forming the estate of the deceased.
3. The grant was issued to the petitioner on 17th September 2012. She applied for confirmation and the estate was distributed to her and **Ian Kirimi** jointly on 19th December 2016.
4. The matter was ordered transferred to this court on 7th March, 2018 by Limo J. On 17th September, 2018, **Geoffrey Kirimi Mbogori** applied for the revocation of the grant on the grounds that it was fraudulently obtained. That the petitioner did not disclose that there were other beneficiaries apart from her.
5. The objector contended that the petitioner filed the Succession Cause in Chuka leaving Githongo, Meru and Nkubu Law Courts in order to avoid the objector. That the deceased had five Children, namely, **Joseph Gitua M'Mbogori, Salome Ncooro, Francis Nteere M'Mbogori, Geoffrey Kirimi Mbogori & Edith Nkatha**. That **Salome Ncooro and Francis Nteere** are both deceased but have left behind children who reside on the subject property.
6. In opposing the application, the petitioner filed a Preliminary objection dated 11th October 2018 stating that the matter has already been determined; That due procedure had been followed and that considerable time has since lapsed. She attached a letter addressed to the President of the Republic of Kenya through the Ministry of Interior and Coordination of National Government setting out a protracted conflict between her and her brothers on the subject property.
7. The relevant section that provides for revocation and or annulment of grants is **section 76 of the Law of Succession Act**. One of the grounds for revocation is where a grant has been obtained fraudulently. The section is clear that a grant may be revoked at any time even after it has been confirmed.
8. For the foregoing reason, the petitioner's objection that the matter is res-judicata has no basis.
9. The petitioner did not deny that she never sought the consent of her brothers before she commenced the succession cause. Her explanation that she filed the matter in Chuka on advise that there were many matters in Meru Court was not persuasive enough. She never explained why she by passed Githongo and Nkubu Law Courts to go and file the Cause in Chuka which did not have jurisdiction to entertain the cause. The only irresistible conclusion is that, she wanted to prosecute the matter as far away as possible from her brothers.
10. The other issue is her lies. The record shows that when she appeared in Chuka High Court for confirmation of grant on 10th February, 2016, she told the court: -

“All the sons and one daughter of the deceased are now deceased. I am the only one remaining in terms of the letter of the chief”

11. There could be no better fraud than that. She killed everyone in her family, including the objector, so that she could have the entire property shared to her and her son alone.

12. Further, she failed to secure the concurrence or consent of the other beneficiaries in bringing the succession cause.

13. For the foregoing reasons, I am satisfied that the grant issued to the petitioner cannot stand.

14. Accordingly, I allow the application with the following directions/orders: -

a) the grant issued to **Edith Nkatha Mbogori** on 17th September, 2012 is hereby revoked.

b) all and any entry made on title number **Abothuguchi/Kithirune/612** is hereby expunged and the property ordered to revert back to the name of the deceased.

c) a fresh grant hereby issues to **Edith Nkatha Mbogori and Godfrey Kirimi Mbogori** jointly.

d) the joint administrators to apply for confirmation forthwith, if they agree. However, if there is no agreement, any of them is at liberty to file and serve an application for confirmation within 30 days of this ruling with the aggrieved party having leave to protest thereto.

e) this being a family matter, propose to make no orders as to costs.

DATED and DELIVERED at Meru this 21st day of February, 2019.

A. MABEYA

JUDGE