



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION NO. 563 OF 2013

IN THE MATTER OF THE ESTATE OF WANGITHI MWANIKI GATUMUTA Alias ANNE WANGITHI GATUMUTA ...(DCD)

DOLLY WAWIRA MURIUKI & 5 OTHERS..... APPLICANTS

V E R S U S

PETER KARIUKI MWANIKI..... RESPONDENT

RULING

1. Peter Kariuki Mwaniki was issued with grant of letters of administration of the estate of Anne Wangithi Gatumuta alias Wangithi Mwaniki Gatumuta on 20/09/2013 and the same was confirmed on 23/09/2014 whereby the whole share of the deceased's estate **Kabare/Nyagati/1670** was given to the him.

2. The applicant has now filed an application seeking to revoke the said grant on the basis that the petitioner failed to include the names of all beneficiaries to the estate. He pursued the succession cause secretly, acted in cahoots with the area chief to mislead the Court that he was the only legal heir and has intermeddled with the estate.

3. That the deceased was survived by the following;

- 1. Lilian Njeri – daughter (deceased survived by Sarah Wakabari, Shadrak Macharia, Anthony Murimi and Shelmith Wangechi)**
- 2. Esther Wambui Maragwa – daughter**
- 3. Peter Kariuki Mwaniki - son**
- 4. Dolly Wawira Muriuki – daughter**
- 5. James Gitari Mwaniki - son**
- 6. Rosemarie Micere Mwaniki – daughter**
- 7. Stephen Kibara – son (deceased)**
- 8. Josephine Wangechi – daughter**
- 9. Sarah Wakabari Mwaniki – daughter**

4. He therefore seeks an order that the grant be revoked and a fresh grant be issued to Dolly Wawira Muriuki.

5. The petitioner though served with the application did not file any response nor did he attend court after service of the mention date.

Section 29 of the Succession Actstates;

For the purposes of this Part, "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.

6. The applicants as the children of the deceased are dependants of the deceased and are entitled to benefit from his estate. The applicants did not file any proof that they are the children of the deceased. However, the petitioner did not file an affidavit to deny this allegation. The application is not opposed. **Section 76 of the Law of Succession Act** provides:-

“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-“

7. The applicants has established grounds to warrant the court to order the grant to be revoked.

8. Firstly, the petitioner concealed material facts from the court by failing to disclose that there were other beneficiaries who were entitled to a share of the estate of the deceased.

9. Secondly, the proceedings were defective in substance as the petitioner failed to include all the beneficiaries and filed the succession secretly.

10. **Section 76** lays the basis upon which the court will order a revocation of grant. The applicant has established grounds under the Act for revocation of grant. The petitioner did not oppose the application. I find that the application has merits. I order as follows:-

a) the grant confirmed on 23/9/2014 shall be revoked.

b) The petitioner to furnish an account of the estate.

c) The applicant Dolly Wawira Muriuki is appointed as a co-administrator with the petitioner.

d) A fresh application for confirmation of grant shall be filed.

e) No orders as to costs.

Dated at Kerugoya this 21st day of February 2019.

L. W. GITARI

JUDGE