



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO 193 OF 2005**

**IN THE ESTATE OF JAPHET RUTERE KAJARA (DECEASED)**

**JUSTUS GIKUNDA RUTERE.....PETITIONER**

**VERSUS**

**GRACE KANIRU RUTERE.....RESPONDENT**

**JUDGMENT**

1. **JAPHET M'RUTERE KAJARA ('the deceased')** to whom this succession cause relates, died on 4<sup>th</sup> July 1998. On 15<sup>th</sup> May 2005 the Chief of Kiamiogo wrote a letter of introduction stating that the deceased had 20 survivors among them a widow, 9 sons, 6 daughters, 2 daughters in law and 2 grandchildren. His assets were listed in form P&A 5 to be **ABOTHUGUCHI/KIBIRICHIA/ 2439, 2440, 2441, 2442 and 2443.**

2. On 27<sup>th</sup> June 2019 grant of letters of administration intestate were issued to the petitioner and confirmed on 4<sup>th</sup> March 2008. On 12 April 2011 the petitioner applied in a chamber summons for orders compelling the Objector to surrender original titles to **ABOTHUGUCHI/KIBIRICHIS/2439 to 2442** because the grant was confirmed but has not been implemented due to the refusal by the objector to release the original title deeds.

3. The objector applied for revocation of grant dated 26<sup>th</sup> May 2008 and 22<sup>nd</sup> January 2018. The grounds upon which the application is based are contained in the objector's affidavits sworn on 26<sup>th</sup> May 2008 and 25<sup>th</sup> September 2017. It is contended in brief that she was married to the deceased and that this cause was filed fraudulently and without her knowledge and consent. That her two children Lucy Kinanu and Miriam Kajuju were left out of the distribution of the deceased estate and that the 1 acre the objector was provided for was not fair and equitable as she has a mentally challenged daughter she is caring for. She argued that strangers were also included in the estate. The objector admitted to refusing to release the title documents because of the reasons stated above.

4. The application was opposed by the Petitioner who filed affidavits on 24<sup>th</sup> July 2008 and 7<sup>th</sup> March 2018. He claimed in brief that this cause was filed openly and with the knowledge of all legitimate beneficiaries. He contended that distribution was done fairly and the objector was allocated 1 acre. Therefore, the objector application for revocation of grant is unfair and unjust since he has already settled all the beneficiaries as per the confirmed grant. He stated that this cause has been frustrated by delays from the objector. Moreover, he and his other family members had never seen their alleged brother and sister as their names were introduced to them by the chief during the meeting. Therefore, they could not be able to ascertain their age which was a mistake and not intentional. That there are no strangers in the estate and if there are people occupying portions then they have temporary interests like leases which would terminate with time.

5. This application was canvassed by way of written submissions. The petitioners reaffirmed their above position and added that if revocation was granted it would adversely affect the other 20 dependants. The Objector reiterated what was contained in her affidavits and supported her allegations with the case of **Samuel Wafula Wasike vs. Hudson Simiyu Wafula CA Case No. 161 Of 1993.**

**ANALYSIS AND DETERMINATION**

6. The court has been invited to revoke the grant **issued on 27<sup>th</sup> June 2007 and confirmed on 11<sup>th</sup> March 2008 to the petitioner.** Does the application meet the threshold of law?

7. Section 76 of CAP 160 sets out the grounds upon which a grant may be revoked as follows;

***“76. 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) 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 order or allow; 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.”*

8. From a careful examination of the record the following emerge:-

a. The petitioner did not include Lucy Kinanu and Miriam Kajuju in the distribution of the estate of the deceased. He admitted the omission but which he termed to have been inadvertent rather than intentional..

b. The two are daughters of the deceased and are entitled to inherit their father's estate.

c. Further, the petitioner included grandchildren of the deceased in the distribution.

9. What effect if any will such scenario have in law? A reasonable conclusion is that such grant was obtained by concealment of fact material to the case. See the case of **SAMUEL WAFULA WASIKE -vs- HUDSON SIMIYU WAFULA CA NO.161 OF 1993** (Kwach, Omolo and Tunoi JJA) where it was held that:-

**“A grant obtained on the strength of false claims, without obtaining the consent of persons who had prior right to the grant and on the basis of facts concealed from the court, is liable to revocation.”**

10. Moreover, the objector claimed that there were strangers who were allotted estate properties. The petitioner was evasive when he stated that there are no strangers on the estate land but if they are, such are on temporary basis as leases etc which could be determined easily. I also note that, from the record the parties were not clear as to the rightful beneficiaries and the position of the interested parties in the estate. For example it not clear who Martin Kiogora Guantai, Patrick Mutua, Zipporah Karuta, Samuel Kiruki and Gladys Agwiria are.

11. Before I close I wish to comment to the assertion by the Petitioner that revocation will disrupt the twenty (20) dependants as he has already distributed the estate. Revocation of grant is provided for in law as a remedy where circumstances set out in section 76 of the Law of Succession Act are established. And in deserving cases, revocation will not be refused because there are many dependants. Similarly, in cases not deserving, revocation will not be issued because there is only one or few dependants. Again, in deserving cases, revocation will not be refused because the estate has been distributed. Or, in cases not deserving, revocation will not be issued because the estate has not been distributed.

12. Be that as it may, without much ado, I find that the objector has satisfied Section 76 of the Law of Succession Act and her application is allowed on the following terms;

**I. The grant made on 27<sup>th</sup> June 2007 and confirmed on 11<sup>th</sup> March 2008 is hereby revoked**

**II. That a grant of letters of administration is made to Justus Gikund Rutere and Grace Kaniiru Rutere.**

**III. Parties shall file within 14 days affidavits on mode of distribution stating clearly the houses and children of the deceased, and indicating the beneficiaries. if any, who have passed on. Any relevant factor including but not limited to persons living with disability should be stated in the affidavit of distribution They should also state the position of the interested parties in relation to the estate of the deceased.**

Dated, signed and delivered in open court this 19<sup>th</sup> Day of February, 2019

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**F. GIKONYO**

**JUDGE**

In presence of

Kimathi for Gikunda for petitioner

No appearance for respondent

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**F. GIKONYO**

**JUDGE**