



**REPUBLIC OF KENYA**

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

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1178 OF 2017**

**IN THE MATTER OF THE ESTATE OF SAMUEL NJENGA MACHUA**

**alias SAMUEL NJENGA MACUA (DECEASED)**

**RULING**

1. The Objector Applicant herein Idith Wamaitha Muthiru filed this summons for revocation of grant dated 8.8.2018 seeking for Orders that the grant issued on 8.1.2018 to Catherine Wangari Mwani and Penina Wangui Wangari be revoked on the grounds that the Petitioner concealed material facts.
2. The Application is supported by the Affidavit of the Applicant in which she has stated that she is the first wife of the deceased and a beneficiary of the Estate together with her four children.
3. The Respondents who opposed the Application for revocation filed a notice of preliminary objection on the grounds that no objection can be made after confirmation of grant.
4. The 1<sup>st</sup> Respondent CATHERINE WANGARI MWANGI also filed a Replying Affidavit dated 17.12.2018 in which she stated that she is the only wife of the deceased and she denied that she had concealed material facts when applying for grant of Letters of Administration.
5. The 1<sup>st</sup> Respondent also said that the grant has already been confirmed and the Certificate of confirmation was rightfully issued.
6. The hearing of this case proceeded by viva voce evidence. The Objector Applicant stated that she is the first wife of the deceased and that at the time the deceased died, they had made up their differences and he used to visit her.
7. She said when the deceased married the 1<sup>st</sup> Respondent, they had separated but her children were staying with the deceased and the 1<sup>st</sup> Respondent chased them away when she got married to the deceased.
8. The Objector called KEZIA WANJIRU NJENGA, her third born child who stated in her statement filed in Court that the grant of letters of Administration and Certificate of Confirmation were disclosed to them by the Deputy County Commissioner Dagoretti County.
9. The 1<sup>st</sup> Respondent filed her witness statement and gave evidence and stated that she had agreed to give the objector an eighth out of Plot No. Dagoretti/Waithaka/1385.
10. The 1<sup>st</sup> Respondent stated that Keziah has been cultivating the said piece of land. She stated that when she got married to the deceased, she found a house without any furniture and that she built the rental houses with the deceased and further, she said that the objector is not entitled to benefit from the estate of the deceased.
11. After a careful consideration of the affidavits on record and the testimonies of witnesses, the issues that arise for determination are:

**(i) Whether the grant of Letters of Administration were fraudulently obtained**

**(ii) Whether the same should be revoked.**

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.”*

12. The grant sought to be revoked was issued 8.1.2018 to Catherine Wangari Mwani and Penina Wangui Wangari. It was their Petition that she is the first wife of the deceased and a beneficiary of the Estate together with her four children.

13. From the evidence adduced, the Respondents claimed to be the rightful beneficiaries to the deceased's estate. They deny any undertaking any illegality in the process in which the grant was obtained. The Applicants alleged that the Respondents in petitioning for letters of Administration to the estate of the deceased failed to disclose material facts of the applicants' existence and failed to notify the dependants of the estate of the deceased, misrepresented themselves as the only beneficiaries

14. From the record, it is not in dispute that I find that it is not in dispute that the deceased died on 17.5.2016 without leaving a Will. It is also not in dispute that the objector is the first wife of the deceased and that she had four children with the deceased before they separated. It is also not disputed that after the deceased separated from the objector, he married the 1<sup>st</sup> Respondent and they have three children.

15. However, in the Petition for Letters of Administration intestate, the 1<sup>st</sup> respondent did not include the objector or her children yet she was aware of their existence. This is sufficient proof to meet the threshold set by the Succession Act for Revocation of grant. The Respondent did not put up any viable defense as to why the objector's family was left out from the list of beneficiaries.

16. On the issue as to whether the Letters of Administration were obtained fraudulently, I find that the answer is in the affirmative for the following reasons:

**(i) The 1<sup>st</sup> Respondent/Petitioner was aware that the deceased had another family and she did not disclose it to the court.**

**(ii) There was concealment of material facts and therefore the grant of letters of administration and certificate of confirmation were fraudulently obtained.**

17. On the issue as to whether the same should be revoked again I find that the answer is in the affirmative. The same are hereby revoked as they were fraudulently obtained.

18. I accordingly allow the summons for revocation dated 8.8. 2018 and I set aside both the grant of letters of administration dated 8.1.2018 and the certificate of confirmation dated 11.6.2018.

19. I direct that the originals be returned to Court forthwith.

20. I further direct that fresh letters of administration be issued to the objector and the first Respondent to administer the estate jointly

21. The fresh letters of administration to be issued within 30 days of this date.

22. The objector and the 1<sup>st</sup> Respondent are directed to file a joint summons for confirmation of grant within 60 days of this date.

23. In the meantime, all the rental income from the Estate to be deposited in court awaiting confirmation of grant.

24. If the Objector and the 1<sup>st</sup> Respondent are not able to act jointly, this estate will be handed over to the Public Trustee for distribution.

25. Mention after 30 days on 22.7.2019 for compliance and for further directions.

26. In Orders to issue accordingly.

**DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 21<sup>ST</sup> DAY OF JUNE, 2019**

**ASENATH ONGERI**

**JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.**