



**REPUBLIC OF KENYA**

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

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1198 OF 2002**

**IN THE MATTER OF THE ESTATE OF KINITI NDURA – (DECEASED)**

**HANNAH WANJIKU KINITI.....APPLICANT**

**VERSUS**

**MWANGI KABAIKU.....RESPONDENT**

**RULING**

1. The Summons coming for consideration in this ruling is dated 13.10.2009 seeking the following orders.

**(i) THAT the grant of letters of Administration issued to MWANGI KABAIKU (now deceased) in KIAMBU SUCCESSION CAUSE NO. 148 OF 1999 be revoked.**

**(ii) THAT the said letters of administration were issued fraudulently as the Petitioner concealed material facts in order to defeat any claim to the estate by the rightful and legal heirs.**

2. The Summons for revocation is supported by the Affidavit of HANNAH WANJIKU KINITI dated 13.10.2009 in which she has deposed as follows:

**(i) THAT She is the administrator of the Estate of the deceased herein KINITI NDURA who was her father in KIAMBU SUCCESSION CAUSE NO. 222/2000.**

**(ii) THAT the Deceased died intestate on 2<sup>nd</sup> February 1979 and was survived by the following:**

**(a) Hannah Wanjiku Thairu**

**(b) James NjiuThairu**

**(c) Wambui Karanja**

**(d) Wangui Ngugi**

**(iii) THAT in September, 2000, she petitioned for grant of letters of administration intestate which was granted on 16<sup>th</sup> November, 2000.**

**(iv) THAT part of the estate of the deceased was Land Parcel No. LIMURU/BIBIRION/T.355 on which the deceased and the beneficiaries resided and where she resides to date.**

**(v) She was shocked to discover that the said parcel is registered in the name of MWANGI KABAIKU.**

**(vi) THAT she discovered that the said MWANGI KABAIKO was issued with letters of administration in KIAMBU SUCCESSION CAUSE NO. 148 of 1999,**

**(vii) THAT the said MWANGI KABAIKU was a squatter on the subject parcel.**

**(viii) THAT she is now seeking to have the grant issued to MWANGI KABAIBU in KIAMBU SUCCESSION CAUSE NO. 148/1999 revoked as it was issued fraudulently.**

3. The parties were directed to file written submissions in the Summons for revocation dated 13.10.2009. The Applicant did not file any submissions dated 8/11/2019. Her supporting Affidavit dated 13.10.2009 has also been considered.

4. The Respondent filed written submissions dated 28.10.2019 and further submissions dated 22/11/2019 also relied on her Replying Affidavit dated 7.12.2014 in which she has deposed as follows:

**(i) THAT She is the wife of MWANGI KABAIBU (now deceased) who died on 28.10.2009.**

**(ii) THAT the deceased MWANGI KABAIBU petitioned the Estate of KINITI NDURA in SUCCESSION CAUSE NO. 1481 of 1999 after a citation as a creditor of the estate.**

**(iii) THAT KINITI NDURA (deceased) had sold LIMURU/BIBIRIONI/T355 to her husband MWANGI KABAIBU (Deceased) in 1969.**

**(iv) THAT the letters of administration were properly issued and confirmed and the property was transferred to her husband and he went into possession immediately.**

**(v) THAT on 16.11.2000 when the Applicant herein became the administrator of the estate of KINITI NDURA in KIAMBU SUCCESSION CAUSE No. 222 of 2000, the LR. LIMURU/BIBIRIONI/T.355 was not part of the Estate of the deceased herein.**

5. I have considered the Affidavits filed herein in respect to LR. LIMURU/BIBIRIONI/T.355 (hereafter referred to as the suit property).

6. **Section 76:** 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 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.*

7. I find that the said Parcel of Land does not form part of the estate of the deceased herein as it had already been transferred to the late MWANGI KABAIBU vide Succession Cause No. 149 of 1999.

8. I therefore dismiss the summons for revocation dated 13<sup>th</sup> October, 2009 for want of merit for reasons that the suit property does not form part of the Estate of the deceased herein.

9. I order that each party bears its own costs of the said summons

**DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 29 TH DAY OF NOVEMBER, 2019**

**ASENATH ONGERI**

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