



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

SUCCESSION CASE NO. 116 OF 2016

IN THE MATTER OF THE ESTATE OF WILSON MWAURA NJUGUNA (DECEASED)

PAULINE NYAMBURA.....1ST APPLICANT

JANE WANJIRU.....2ND APPLICANT

TERESIA WANJIKU.....3RD APPLICANT

MARY WANGARI.....4TH APPLICANT

VERSUS

PETER NGUGI MWAURA.....1ST RESPONDENT

PETER MWAURA NJUGUNA.....2ND RESPONDENT

JUDGMENT

1. Before me is Summons for Revocation of Grant filed on 6th February, 2013 expressed to be brought under Section 7(a), (b) & (c) of the Law of Succession Act and Rules 44 and 73 of the Probate and Administration Rules. The Applicants sought orders: -

a) that the grant of Letters of Administration issued to **PETER NGUGI MWAURA** and **PETER MWAURA NJUGUNA** be revoked.

b) that any and all changes of registration in respect of the deceased's properties pursuant to the said Grant be cancelled.

2. The Application is based on the ground that the Applicants are beneficiaries of the deceased's estate, by virtue of being daughters of the late **Njuguna Mwaura**, a son of the deceased herein and that the Petitioner/Respondents had omitted the Applicants from the proceedings herein with the intention of disinheriting them.

3. **PAULINE NYAMBURA** swore the affidavit in support of the Summons for Revocation of Grant. She deposed that she is the deceased's grand-daughter, that the deceased was married to two wives namely, **Elizabeth Wanjiku Mwaura** and **Catherine Wambui Mwaura**. She further deposed that the Petitioner/Respondents herein are from the house of **Catherine Wambui Mwaura** while her father was from the house of **Elizabeth Wanjiku Mwaura**. Further, she contended that the Petitioners applied for letters of administration without involving them and thus the interest of their father is at risk. Lastly, it was deposed that the grant of letters of administration was issued without disclosing these material facts to the court.

4. The application was not opposed. The Petitioner/Respondents neither filed a replying affidavit nor submissions even after the court ordered on 19/7/2018, that they be re-served with the Summons for Revocation of Grant.

5. On their part, the Applicants filed their written submissions on 28th November, 2018 through their advocate. Counsel relied on the supporting affidavit. It was submitted that the Respondents excluded the Applicants' father from the list of beneficiaries to the deceased's estate. Counsel contended that the Applicants' father was entitled to benefit from the estate of the deceased and in his absence, his dependents ought to have been included as beneficiaries of the deceased's estate. The court was urged to revoke the grant, together with any land transmissions as material facts were not disclosed to the court that gave the impugned grant.

6. The revocation application proceeded unopposed, despite service being effected upon the Petitioners. The chief complaint by the Applicants is that they have been excluded from the proceedings as children of the intestate's deceased son, one **Njuguna Mwaura**. He was the intestate's son with his wife **Elizabeth Wanjiku Mwaura**. The Applicants are aggrieved that only the house of the deceased's wife

Catherine Wambui Mwaura were listed as beneficiaries. I note from the affidavit of the Petitioner **Peter Ngugi Njuguna** filed into court along with the Petition on 26th January 2012, a deposition that refers to only one deceased widow of the deceased, **Catherine Wambui Njuguna**. On the uncontroverted material presented by the Applicants, the children of the deceased with his other wife **Eliabeth Wanjiku Mwaura** ought to have been included as beneficiaries, and if dead, represented by their children.

7. Considering the age of this matter, and the interests of justice, I am not persuaded that the justice of the matter lies in revoking the grant altogether. Rather, noting that the grant was issued in June 2012, I would direct that:

- a) this cause be transferred to the SPM's Court, Limuru.
- b) that within 60 days of today's date an application be made by the Petitioners to confirm the grant .
- c) that all the children of the deceased by his two wives **Catherine Wambui Njuguna** and **Elizabeth Wanjiku Mwaura** be listed as beneficiaries in the said application, and if dead, be represented by their children, for purposes of distribution
- d) the Petitioners to file into court, along with the summons to confirm grant, a letter from the relevant chief confirming the proper list of beneficiaries to the estate of the deceased herein.
- e) these orders to be extracted and served upon the Petitioner/Respondents for compliance.

If the Petitioners do not comply with the direction to file a summons to confirm grant within 60 days of being served with this order, the grant issued to them on 4th June 2012 will stand automatically revoked.

f) extraction and service of these orders to be undertaken by the Applicant herein and appropriate affidavit of service filed into court.

8. Parties will bear own costs.

DELIVERED AND SIGNED AT KIAMBU THIS 20TH DAY OF DECEMBER 2019

C. MEOLI

JUDGE

In the presence of: