



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 127 OF 2000

IN THE MATTER OF ESTATE OF STANLEY NKUBITU M'MBUI alias STANLEY M'NKUBITU M'MBUI (DECEASED)

JOEL MUKARIA NKUBITU.....PETITIONER/RESPONDENT

VS

PURITY NTIBUKA KIMATHI.....1ST APPLICANT

FAITH NKIROTE MAINA.....2ND APPLICANT

RULING

Summons for revocation or annulment of grant was brought pursuant to Section 76(b) and (c) and Rules 44 (1) of the Probate and Administration Rules Cap 160, Laws of Kenya.

The applicant sought that the grant be revoked for reasons it was obtained fraudulently by making a false statement or by the concealment of material facts. The other reason is that the grant was obtained by means of an untrue allegation. The application is supported by grounds on the face of application and affidavit sworn by Purity Ntibuka Kimathi. The applicants claimed they had been disinherited completely. That the Petitioners had demolished the family home and was building a multi-million personal residential house. That the petitioners misled the applications that he would share the estate as per the wishes of their deceased father but failed to do so. That the 2nd applicant was not consulted. They therefore wanted the estate distributed afresh.

The deceased, Stanley Nkubitu M'Mbui died on 27th December, 1988 and according to the Chief's letter dated 19th August, 1999 he was survived by:

- a) Milliam Kinatore Stanley- widow
- b) Joel Mukaria Nkubitu- son
- c) Charity Kajuju Muguna- daughter

The deceased also left behind several parcels of land as listed in form P&A5:-

1. Kiirua/ Ruiri/616- 4.45 Ha
2. Kiirua/ Ruiri/1195-2.02 Ha
3. Ntima/Ntakira/1101- 0.416 Ha
4. Plot in Isiolo Township
5. Plot No.2 Mutuma Market Riuri

HON. A. ONG'INJO Grants of letters of administration was made to Joel Mukaria Nkubitu on 18th October 2000 and by an application dated 28th September 2016, he sought to have the grant confirmed. This was confirmed on 7th March, 2017 in the presence of 6 beneficiaries including the 1st applicant. However, the 2nd applicant was not present. She was said to have been in the U.S.A and the 1st applicant wrote an

email consenting to the proceedings of confirmation to go on. Believing that the beneficiaries were in agreement as to mode of distribution proposed by the Administrator, this Court went ahead and confirmed the grant. As it appears, many of the beneficiaries have been left out including survivors of the deceased persons beneficiaries. There is no order that was made that authorises the Administrator to demolish the deceased persons family house and his actions if true can only be termed as malicious and criminal.

Having looked at the affidavit in support of the application as well as the submissions filed by the parties inform the parties, I am guided by **Section 38 of the Law of Succession Act** and the ***Matter of the Estate of Mary Wanjiru Thairu No. 1403 of 2002*** where it was held that all children are equal beneficiaries of the deceased's estate. As such, it is only just and fair that the grant be revoked and any transactions arising out of the grants are subsequently nullified.

HON. A. ONG'INJO

JUDGE

Ruling Signed, Delivered and Dated this 27th Day of September 2018.

In the presence:

Ms Nyagah Advocate holding brief for Mwirigi Advocate for Petitioner

M/S Kiautha Arithi Advocate for Respondent – No appearance

Order

M. 18.10.18 for directions

All beneficiaries to attend.

HON. A. ONG'INJO

JUDGE