



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 332 OF 2009

IN THE MATTER OF THE ESTATE OF JOSEPH THUKU GACHATHI (DECEASED)

TONY WATAKU THUKU.....1ST OBJECTOR/APPLICANT

SALOME WANJIRU THUO.....2ND OBJECTOR/APPLICANT

AND

SERAH WAIRIMU THUKU.....PETITIONER/RESPONDENT

RULING

1. The Objectors herein filed an application for revocation of grant on 4th February, 2013 via summons dated 30th January, 2013. The Objectors are seeking that the court do revoke or annul the grant issued on 10th July, 2012 to Serah Wairimu Thuku, the Petitioner herein. The grant was issued in relation to the estate of Joseph Thuku Gachathi who died domiciled in Kenya on 29th June, 2008.
2. The grounds on the face of the application are that: the will deposited in court by the Petitioner, and which was adopted by the court, is not a true will of the deceased; that the signature in the purported will allegedly signed by the deceased differs from the deceased's signatures in other documents; and that some of the deceased's properties are not mentioned in the will.
3. The summons is supported by an affidavit sworn by Tony Wataku Thuku, the 1st Objector herein, in which he depones that he has the authority of the 2nd Objector to swear the affidavit on behalf of himself and the 2nd Objector. Tony states that he is the eldest son of the deceased and the Petitioner herein is the second wife of the deceased. He states that his late mother, who was the deceased's first wife, died in 2005 and there are seven children in his mother's house.
4. The 1st Objector avers that the Petitioner misled the court with a forged will to secure a grant. That the will favored the Petitioner and omitted the name of the 1st Objector who is the deceased's eldest son. He urges that the purported will failed to provide for all dependants and also left out some of the deceased's properties namely: Makuyu farm, Mathare North plot and Alli Juja farm shares.
5. In response to the summons, Serah Wairimu Thuku, the Petitioner herein, filed an affidavit dated 15th March, 2013 in which she depones that she is a widow of the deceased. She states that the application for revocation of grant as filed by the Objectors lacks merit. That during his lifetime, the deceased made and executed a will which indicated how his properties would be distributed after his death. She urges that the will was executed by the deceased in the presence of his advocate Ms. Mwicigi Kinuthia Advocates, and two witnesses namely Francis Gachathi Karua and Stanley Wanyoike Gathua. Serah annexed affidavits deponed by the witnesses in which they state that they are ready to testify in court as to the authenticity of the will.
6. Serah contends that during his lifetime, the deceased allocated a portion of land parcel number Ngenda/Gathage/244 to the 1st Objector. The 1st Objector cultivates the portion of land and has since put up a matrimonial home on it. Serah urges that the 1st Objector can therefore not claim that he was not provided for by the deceased even though he was not included in the will.
7. The Petitioner states further that, except for what is in the will, the deceased did not have any other property. The Petitioner urges that the will did not favour her as alleged to by the 1st Objector citing that the will includes two other children of the deceased namely Gathimba Githuku and Henry Gachathi Thuku. That the other children of the deceased namely Ruth Wairimu, Esther Nyambura, Mary Wahu and Salome Wanjiru are all married. They were married several years before the deceased wrote his will, and the deceased did not deem it fit to include them in his will.
8. The Petitioner contends that the fact that the deceased did not appoint another Executor after the death of his son, known as Gathimba

Githuku, does not invalidate the will. Further that the documents which are being compared with the will were executed several years before the deceased signed the will. That it is possible that his signature may have changed. She maintains that she is not aware of any of the deceased's property in Makuyu and Mathare North or any shares in Alli Juja Farm as alleged by the objectors.

9. The 1st Objector, Tonny Wataku Thuku, gave sworn testimony and stated that he is aged 62 years and is the first born son of the deceased. He filed the summons for revocation because the signature in the purported will does not belong to his father, the deceased herein. That the signature in the will does not match the signature contained in the deceased's Identity Card obtained in 1996 and allotment offers for Plots no. 278 and 238 in Kariobangi. He urged that the deceased always signed his two names 'Thuku Gacabi'.

10. It is the 1st Objector's testimony that the deceased had two wives: his late mother, who married the deceased in 1930 as the first wife and Serah Wairimu, the Petitioner herein, who married the deceased in 1979 as the second wife. The first wife's house had eight (8) children, three sons and five daughters. Two of the eight (8) children have since died. The second wife has one adopted child called Mary Wahu.

11. The 1st Objector avers that at the time of marrying the second wife, the deceased already had some property namely:

- i. Land parcel in Makuyu
- ii. Land Parcel 244 in Ngenda Gathage
- iii. Plots no. 278 and 238 in Kariobangi
- iv. Plot no. 3 Gathage
- v. Plot No. 677 Kariobangi
- vi. Shares in Kitamayu plot in Thika.

The deceased did not acquire any property after marrying the Petitioner herein as his second wife. All they did was sell some of the properties that they already had.

12. The deceased's family lives on the land parcel known as Ngenda Gathage 244 which measures 7.5 acres. The deceased gave the Petitioner 2.5 acres out of the land, leaving 5 acres to the House of Beth, his first wife. The 5 acres were divided amongst the male and female children of the first House on 4th April, 2003. The 1st Objector stated that the will failed to mention this property.

13. According to the 1st Objector, there was no bad blood between him and his late father. He asserted that they were good friends and that he even managed the deceased's property during his lifetime. That it was he, his sister Mary Wahu and her husband that cared for the deceased when he fell ill. He did not believe that his brother Gathimba, now deceased, who was a drunkard and had constant quarrels with the deceased could be named as the executor of the will. The 1st Objector urged that he is the only son of the deceased who is sober and can be depended upon.

14. The 1st Objector further averred that in the year 1984, he gave the deceased a sum of Kshs. 16,000/- to service a loan from Agricultural Development Co-operation (ADC). The deceased promised to give him two plots out of Landless estate in Thika town in return. The 1st Objector also gave the deceased Kshs. 2,000/- in lieu of a goat that he had asked from the 1st Objector. It was on this premise that the deceased gave the 1st Objector plots no. 283 and 766 at Landless estate in Thika. The 1st Objector sold one of the plots and kept one. The Petitioner was also given Plot No. 146 in Phase 5 which she later sold to one Kamau Nderi. The three plots were not mentioned in the will.

15. It is the 1st Objector's testimony that he only became aware of the deceased's will in the year 2008. He had previously made inquiries from the deceased's lawyer, one Kinuthia Mwicigi, as to whether the deceased left a will and was informed that the deceased had left no will. Sometime later, the 1st Objector went to the lawyer's office at the prompting of the Petitioner only to be given a photocopy of an alleged will. To date, he has not seen the original copy of the will.

16. During the hearing, the 1st Objector was shown a copy of the will. He confirmed that Francis Gacathi and Stanley Wanyoike Gathua had both attested the will as witnesses. He admitted to seeing their respective affidavits both sworn on 15th March 2013, in which they deponed that they witnessed the deceased's signing of the alleged will. He confirmed that there was no bad blood between him and the two witnesses and he did not therefore know of any reason why they would depone false affidavits.

17. Salome Wanjiru Thuo, the 2nd Objector herein, testified as PW2 and stated that she is a daughter of the deceased. That at the time of his death, the deceased was survived by four daughters and two sons from the House of Beth. One of the deceased's daughters, Lydia Njoki, predeceased her late father.

18. Salome reiterated the 1st Objector's testimony stating that in 1990, the deceased asked them to give him money to pay off what he owed to obtain some plots in Landless in Thika. The balance was Kshs. 16,000/- and an additional Kshs. 15,000/- was needed to process the transfer. The 1st Objector, Tony Watako, raised the money and gave it to their late father to salvage the plots, after which the deceased gave Tony two plots in appreciation. She however does not know how much each plot was worth.

19. The 2nd Objector opined that the deceased did not leave a will when he died and the deceased's lawyer, one Mr. Mwicigi, had

previously confirmed this to them. Four months later, and after visiting the advocate's offices on numerous occasions, the lawyer produced a copy of a will said to have been made by the deceased. To date she has never seen the original will.

20. She disputed the genuineness of the will presented by the Petitioner herein, stating that the signature it bears is not that of the deceased. She clarified that the deceased's signature comprised of two names in small letters as appears in the Kariobangi allotment letter and not as appears in the will which bears one name in capital letters. She however noted that the allotment letters were signed in 1964 and 1977 when the deceased was strong and of average age whereas the will was signed in 2001 when the deceased was aged 89 years. That while it is possible for the signatures to differ, the deceased's hand was still steady at the time.

21. The 2nd Objector contended that the will leaned towards one side, disadvantaging her late mother who was the deceased's first wife, and all her children. Further that the will also omitted some of the deceased's properties namely: Juja farm shares, Gatamaiyu building shares, Makuyu/Kariane/Block II/267 and Mathare North Plots.

22. The 2nd Objector asserted that the will lists Solomon Gathimba who is deceased, as executor yet the deceased was alive when Solomon died in the year 2005. She urged the court to divide the deceased's property amongst all his beneficiaries.

23. PW3, Titus Wainaina Gachugu, gave sworn testimony and stated that he is the deceased's son-in-law, having married the deceased's first born daughter. Titus stated that on 4th April, 2003, the deceased called him to witness the subdivision of land parcel no. Ngenda/Gathage/244 which was the deceased's family land. Also present were the deceased's children and Gitau Gachathi, a brother of the deceased, who has since died.

24. Titus contended that the deceased used a surveyor to produce a sketch of how he wanted the land distributed. The deceased gave a copy of the sketch to both Titus and Gitau for record purposes, and in it, the land which measures a total of seven (7) and a half acres, was distributed as follows:

- i. Sarah – 2 ½ acres
- ii. Tony Wataku – 1 ¾ acres
- iii. Henry Gachathi – 1 ½ acres
- iv. Gathimba – 1 acre
- v. Lydia Njoki – 1 acre

25. Titus stated that there was no surveyor present on the day of the subdivision which was done sometime in 2004. The deceased did not go ahead to obtain title deeds in the different names of the beneficiaries, and to date, the land is still in the deceased's name.

26. Serah Wairimu Thuku, the Petitioner herein, testified as DW1 and stated that she is the surviving widow of the deceased. The deceased already had another wife who has since died, when they got married in 1978. She has one child, an adopted daughter known as Mary Njeri.

27. Serah contended that it was after the deceased's death that she learnt that he had left a will. It was Serah's daughter that found it when she was going through her father's things. Upon stumbling on the will, they went to Mwicigi advocate whose name was written thereon. Mr. Mwicigi admitted to having drawn the will and served Serah with his copy of the will. That the will enumerated the deceased's properties as: two (2) rental houses in Site and Service Scheme Kariobangi in Nairobi and two (2) houses at Gathage market in Gatundu. The deceased left Serah Kariobangi Plot no. 278 while Kariobangi Plot no. 238 was given to his two sons: Henry Gachathi Thuku and Gathimba Githuku.

28. It is Serah's submission that she is the one who managed the deceased's plots during his lifetime. That the deceased brought her to Nairobi and introduced her to the tenants. After the deceased's death, she went to the plots in Nairobi and Gathage only to find that her step-children had taken over all the properties. One plot reverted back to her following an order of the court. Serah proceeded to file a petition for grant of letters of administration which grant is the subject of the summons for revocation.

29. Serah disputed the 1st Objector's allegation that he contributed towards the purchase of the deceased's plots at Landless in Thika. She averred that the Coffee Society in Thika, to which the deceased was a member, bought the land and distributed it to its members. She stated that she is not aware of any gifts in the form of a goat or suits that Tony, the 1st Objector, bought for the deceased. She asserted that the deceased gave the plots to Tony as his inheritance.

30. Serah urged that the deceased's daughters were not given anything in the will because they were already married and in their homes. One unmarried daughter was given land, and upon her death, her children took up the portion.

31. Serah stated that the deceased divided the land parcel in Ngenda into two equal portions as opposed to five (5) portions as alleged by Titus Gachugu, who testified as PW3. The deceased gave Serah and Tony, the 1st Objector, a portion each. The land is however still under the deceased's name.

32. Stephen Wanyoike Kinuthia, an advocate of the High Court of Kenya, testified as DW2 and stated that he prepared a will for one Joseph Thuku Gachathi, the deceased herein. The will was executed on 31st May, 2001 and signed in the presence of two witnesses: Francis Gachathi Karua and Stanley Wanyoike Gathua. Both witnesses saw the deceased execute the will.

33. Stanley Wanyoike Gathua testified as DW3 and stated that he was in court to authenticate the will of the late Joseph Thuku Gacabi, the deceased herein. He knows the parties herein since they are members of the same clan. He swore an affidavit on 15th March, 2013 which was annexed to the Petitioner's replying affidavit.

34. Mr. Gathua stated that on 31st August, 2001, he accompanied the deceased to the office of his lawyer Mwicigi Kinuthia Advocates. They were in a group of three (3) when they went to the lawyer's offices. The lawyer informed them that they were there to witness the deceased sign the will. The three of them were shown the will, after which he saw the deceased sign the will. He, together with Gacathi, were thereafter invited to attest the will. He however stated that the contents of the will were not read to them and he denied allegations that he had colluded with the Petitioner to forge the will.

35. Learned counsel Mr. Mayende filed written submissions dated 25th April, 2018 on behalf of the Objectors. He presented three main issues for determination:

- a. Whether the will dated 31st May, 2001 was fraudulently obtained and or is not by the deceased.
- b. Whether there was a fair distribution of the Estate under the will; if at all the will is by the deceased.
- c. Whether failure by one of the witnesses to testify during the hearing of the case on attestation of the will invalidates the will.

36. Mr. Mayende reiterated the contents of the Objector's pleadings and maintained that the signature contained in the alleged will was not that of the deceased and that the alleged will left out some of the deceased's dependants and properties. Counsel contended that the deceased's female children who were married had been omitted from the will contrary to the provisions of the **Law of Succession Act** which does not discriminate against married and unmarried daughters. He referred the court to the decision in **Re Estate of Lerionka Ole Ntutu (deceased) [2008] eKLR**, which was applied in the court of Appeal case of **Peter Karumbi Keingati & 4 others vs. Ann Nyokabi Nguthi & 4 others [2015] eKLR**.

37. Counsel contended that even if the court were to find that the will was that of the deceased, the distribution therein was unfair and discriminatory. He urged the court to distribute the estate of the deceased in accordance with **Part V** of the **Law of Succession Act**.

38. Learned Counsel Mr. Gichahi filed written submissions dated 2nd July, 2018 on behalf of the Petitioner. Counsel reiterated the contents of the pleadings and submitted that the Objector's have failed to prove that the will was not that of the deceased. He urged that the fact that Gathimba Githuku who was appointed executor under the will predeceased the deceased who never appointed another executor in his place does not invalidate the will.

39. Counsel further submitted that the Objectors have failed to prove that the Plots in Mathare North, Alli Juja Shares, Gitamaiyu Building shares and the alleged bank accounts exist and that they were part of the deceased's estate.

40. Counsel noted that the deceased's will did not provide for his unmarried daughters, and that a testator has power to dispose of his property as he pleases. He asserted that failure of a will to make provision for a dependant does not invalidate the said will since the court is empowered by **section 26** of the **Law of Succession Act**, to make reasonable provision for such dependant. He urged the court to take into consideration the provisions of **section 28** of the **Law of Succession Act** should it be inclined to make provisions for the dependants.

41. Counsel contended that the deceased's four (4) daughters were married and comfortable in their husband's homes and it was therefore not necessary to disturb the small bequests made to their brothers. That in the alternative, the court may consider giving them the Makuyu land which is in the process of being recovered.

42. I have analyzed the pleadings filed by the parties herein, the oral evidence of the witnesses and the submissions filed by both parties. I find that the main issue for determination is whether the will presented before the court constitutes a valid will. This is the precursor to all the other orders sought by the Objectors herein. This issue will determine whether I shall proceed to delve into the issue regarding reasonable provision for beneficiaries or not.

Validity of the will

43. On the issue of validity of the will of the deceased, the applicable law is found under **section 11** of the **Law of Succession Act** which states thus:

“No written will shall be valid unless-

- a) the testator has signed or affixed his mark to the will, or it has been signed by some other person in the presence and by the direction of the testator;**
- b) the signature or mark of the testator, or the signature of the person signing for him, is so placed that it shall appear that it was intended thereby to give effect to the writing as a will;**
- c) the will is attested by two or more competent witnesses, each of whom must have seen the Testator sign or affix his mark to the will...and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”**

44. The Objectors contested the will stating that the signature contained in the will, allegedly signed by the deceased differs with the deceased's signatures in other documents. The 1st Objector in his testimony opined that he is an expert document examiner hence his contention about the discrepancy in the deceased's signature as appears in the alleged will. He did not however file a statement of a document examiner in this regard.

45. Mr. Kinuthia an advocate of the High Court of Kenya testified as DW2 and stated that he prepared the deceased's contested will, and stated that the file was in his archives. He described the deceased as a short, talkative man who was fully in charge of his affairs. The will was prepared in his office in Nairobi and the deceased was of a sober mind. That it is not a requirement of the law that a will bears the signature or stamp of the advocate who prepares it when he had indicated that the will was drawn by himself.

46. One of the attesting witnesses, Stanley Wanyoike Gathua, who testified as DW3, recognized the deceased's signature when a copy of the will was shown to him. Francis Gacathi Karua, the second attesting witness, did not attend court to testify due to complications arising from a diabetic condition that he suffers from. His affidavit is however on record.

47. Mr. Mayende, counsel for the Objectors submitted that for a will to be valid, the Testator's signature must be made in the presence of at least two witnesses each of whom should sign in the presence of the Testator in accordance with **section 11** of the **Law of Succession Act**. That only one witness, Stanley Wanyoike Gathua, was availed in court to provide evidence of attestation. That the second attesting witness, Francis Gacathi Karua, was said to be unwell and unable to testify in court but no medical documents were produced to support the assertion.

48. Mr. Gichahi, counsel for the Petitioner, asserted that **section 11** of the **Law of Succession Act** provides that so long as the testator or the person signing for him affixes his mark or signature in a manner that the mark or signature gives effect to the writing as a will, the signature is a valid signature. That the word "Thuku" appearing on the will was similar to the deceased's signature in the documents produced by the Objectors. He further stated that a person's signature may change due to age or sickness while still bearing characteristics of the holder's handwriting as held in **Re JNM (deceased) [2005] eKLR**. That the will had also been properly attested by two independent witnesses.

49. From the foregoing, it is evident that the copy of the will was authenticated and the names of the persons able to prove its contents provided in line with **section 51(1)(3)** of the **Law of Succession Act**. For avoidance of doubt, the section provides thus:

"where it is alleged in an application that the deceased left a valid will-

(a) If it was written, the original will shall be annexed to the application, or if it is alleged to have been lost, or destroyed otherwise than by way of revocation, or if for any other reason the original cannot be produced, then either-

(i) an authenticated copy thereof shall be so annexed; or

(ii) The names and addresses of all persons alleged to be able to prove its contents shall be stated in the application;

(b) If it was oral, the names and addresses of all alleged witnesses shall be stated in the application."

50. I find that the evidence adduced by one attesting witness together with the deceased's advocate is adequate with regard to the issue of attestation. The collective evidence presented before this court demonstrates that the deceased's contested will meets the requirements of execution and attestation as provided under **section 11** of the **Law of Succession Act**. Further to this, Mr. Stephen Wanyoike Kinuthia, an advocate of the High Court of Kenya, stated under oath that he drafted the disputed will which was then signed by the deceased in his presence and duly attested by the two named witnesses as required by law. No evidence was tendered before this court to demonstrate that Mr. Kinuthia's word cannot not be taken as truth before this court.

51. The Objectors alleged that the will presented before this court was a forgery. It is trite that he who alleges must prove. The Objectors have however failed to make a case of forgery and consequently, I find that the will met all the requirements as relates to formalities.

52. Of importance is that a testator has testamentary freedom to dispose of all, or any of his property by will in any manner he sees fit. This is provided under **section 5(1)** of the **Law of Succession Act** which provides thus:

"Subject to the provisions of this Part and Part III, every person who is of sound mind and not a minor may dispose of all or any of his free property by will, and may thereby make any disposition by reference to any secular or religious law that he chooses."

53. In the case of **Erastus Maina Gikunu & another vs. Godfrey Gichuhi Gikunu & another [2016] eKLR** the Court of Appeal while explaining the purport of **section 5(1)**, cited and applied the case of **Elizabeth Kamene Ndolo vs. George Matata Ndolo Nairobi Civil Appeal No. 128 of 1995**, in which the Court of Appeal observed thus:

"This court must, however, recognize and accept the position that under the provisions of section 5 of the Act every adult Kenyan has unfettered testamentary freedom to dispose of his or her property by will in any manner he or she sees fit. But like all freedoms to which all of us are entitled, the freedom to dispose of property given by section 5 must be exercised with responsibility and a testator exercising that freedom must bear in mind that in the enjoyment of that freedom, he or she is not entitled to hurt those for whom he was responsible during his or her lifetime. The responsibility to the dependants is

expressly recognized by section 26 of the Act...”

54. The 1st Objector stated that the will failed to include all the beneficiaries. That the Petitioner, who has only one adopted child, has been given almost half of the deceased’s estate. Only Henry Gacathi and Solomon Gathimba, from his mother’s house are mentioned in the alleged will.

55. The court is empowered by **section 26** of the **Law of Succession Act** to make reasonable provisions for dependants who have not been adequately provided for by a will. In this regard, it is important to ascertain the property comprising the estate of the deceased and the beneficiaries of the deceased. Only then can the court proceed to make reasonable provisions for the dependants as sought.

56. The evidence tendered by the parties hereto indicates that the deceased distributed some of his properties during his lifetime and these were therefore not included in his will. This includes Ngenda/Gathage/244.

57. The Objectors averred that the deceased’s will left out some of his properties namely:

- a. Makuyu/Kariaini Block II/267
- b. Mathare North Plot
- c. Bank accounts held under the deceased’s name in Equity Bank, KCB Bank and Family bank.
- d. Gitamaiyu Building Shares in Thika Town.
- e. Alli Juja Farm shares.

The Objectors did not however produce any documentation to demonstrate that the above mentioned properties exist and that they form part of the deceased’s estate. This is save for the property known as Makuyu/Kariaini Block II/267, whose title deed was presented before the court.

58. The Petitioner on the other hand contended that the Plot in Mathare and the Ali Juja Farm shares belong to her niece Teresia Wambaa. That the deceased merely managed them during his lifetime since Teresia lives abroad in London.

59. According to Serah, the property known as Makuyu/Kariaini Block II/267 was not included in the will as the title deeds were not ready at the time. She asserted that she is not aware of any bank accounts held under the deceased’s name in Equity Bank, Family Bank, or KCB Bank and urged that she had not hidden any of the deceased’s properties.

60. In the premise therefore, the only property of the deceased that was not included in the will is Makuyu/Kariaini Block II/267. In making provision for dependants, the court will have regard to previous benefits received by each of the beneficiaries as provided under **section 42** of the **Law of Succession Act**.

61. Whereas the 1st Objector contends that the properties he received from the deceased did not form part of his inheritance, he did not however tender evidence to show that he received the properties, namely Plots No. 283 and 766 at Landless estate in Thika in lieu of sums of money he had advanced to the deceased as alleged. In the circumstances therefore, the properties are taken to form part of his inheritance. This is because it is clear that the deceased distributed some of his property during his lifetime. It is questionable that the 1st Objector admits that the deceased distributed some of his property but disputes that those he got did qualify as inheritance.

62. From the foregoing, the only children of the deceased who have been disinherited are his married daughters. One of his unmarried daughters received a portion of land during her lifetime and upon her death, her children, the grandchildren of the deceased, occupied the said portion.

63. Under the **Law of Succession Act** there is no discrimination between married and unmarried or between the male and female children of a deceased as held by the Court of Appeal in the case of **Rono vs. Rono & Another [2005] eKLR**. It is therefore important that the court proceeds to make reasonable provision for the married daughters of the deceased who were not at all provided for.

64. **Section 29(a)** of the **Law of Succession Act** defines a dependant to mean the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death. In light of this therefore, the married daughters of the deceased need not prove that they were maintained by the deceased immediately prior to his death to benefit under **section 26** of the **Act**.

65. The Objectors herein also sought to have the Grant of Probate made to the Petitioner revoked. The circumstances that can lead to the revocation of grant are set out in **section 76** of the **Law of Succession Act** which provides thus:

“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;....”

66. Where a party files an application seeking the revocation of grant, the court has the discretion to make orders as it considers fit in the circumstances and is not bound to issue orders for the revocation of the grant as sought. (See - **Angelas Maina vs. Rebecca Waiyego Mwangi and Another Succession cause 692 of 2012, [2016] eKLR**) In the instant case, a revocation is not necessary for the ends of justice to be met.

67. I have considered both the Objectors’ case and the Petitioner’s case as advanced before this court together with the law pertaining to the issues raised by the respective parties and I find that the evidence adduced is not sufficient to cause the court to revoke the grant issued on the 10th July, 2012. I however find that the married daughters of the deceased are entitled to share in the estate of the deceased. Consequently, it is hereby ordered as follows:

- i. The will dated 31st day of May 2001 was valid and the court upholds its provisions.
- ii. The 1st Objector was bequeathed property *inter vivos* which property properly constitutes his share of the deceased’s estate.
- iii. Ruth Wairimu, Esther Nyambura, Mary Wahu and Salome Wanjiru, the married daughters of the deceased, shall share the property known as Makuyu/Kariaini Block II/267 in equal shares.
- iv. There shall be no orders as to costs.

SIGNED DATED and DELIVERED in open court this 25th day of **October 2018**.

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L. A. ACHODE

JUDGE

In the presence ofAdvocate for the Objectors

In the presence ofAdvocate for the Respondents