



**REPUBLIC OF KENYA**

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

**MISC SUCCESSION CAUSE NO. 12 OF 2018**

**(IN THE MATTER OF THE ESTATE OF HELLEN KAUKO M'KIUNGA (DCD))**

**DORIS KAGWIRIA ..... 1<sup>ST</sup> APPLICANT**

**LUCY KINYA ..... 2<sup>ND</sup> APPLICANT**

**MERCY GAKII ..... 3<sup>RD</sup> APPLICANT**

**VERSUS**

**HENRY NKUNGA KIBUNDU ..... RESPONDENT**

**RULING**

HENRY NKUNGA KIBUNDU was an Administrator of the in-estate of the deceased herein Hellen Kauko M'Kiunga on 18<sup>th</sup> October, 2016. The grant was confirmed on 27<sup>th</sup> October 2017 devolving the whole L.R. NYABENE/ANTUBETWE/NJOUNE/3319 to himself in Maua CMC Succession Cause No. 49 of 2016.

By an application dated 26/2/2018 Doris Kagwiria, Lucy Kinya and Mercy Gakii sought that grant made to Henry Nkunga be revoked for reasons Maua Succession cause no. 49 of 2016 was filed secretly and without their knowledge, that the proceedings were defective and substituted grant was obtained fraudulently by concealment of malicious facts that the said Henry Nkunga was not entitled to inherit from the deceased: that the administrator misled the court that he was sole beneficiary contrary to orders issued on case Misc Succ App No. 71 of 2014.

In consideration of the information obtained from Maua CMC Misc Succ Cause No. 71 of 2014 showing the Respondent herein cited the applicants to take out Letters of Administration to the estate of their late mother giving names of beneficiaries.

Taking in consideration that Respondent used letter from Chief of another location to petition for the Letters of Administration instead of Chief of Kiengu Location where the deceased resided, died and was buried.

Considering also that the respondent did not obtain consent to file petition or even apply for confirmation of grant from beneficiaries who stood in position of priority to him, this court find that grant made to him on 18<sup>th</sup> October 2016 and confirmed on 5<sup>th</sup> October 2017 was defective in substance, fraudulent and obtained by concealment of material facts that he was in fact not a beneficiary to the estate of the deceased but an alleged creditor.

His claim to the estate is disputed by the applicants and therefore will require verification. The grant made is hereby revoked consequent and/or resultant transactions annulled.

Proprietorship of L.R. NYABENE/ANTUBETWE/NJOUNE/3319 will revert to the names of the deceased.

The grant in Maua CMC Succession cause o. 49 of 2016 is hereby made to Doris Kagwira.

Doris Kagwiria and her siblings to file application for confirmation and distribution in the Maua Court file within 14 days for purposes of confirmation and closure of the file.

**HON. A. ONG'INJO**

**JUDGE**

**RULING SIGNED, DELIVERED AND DATED THIS 22<sup>ND</sup> DAY OF NOVEMBER, 2018**

**IN THE PRESENCE OF:**

C/A – Kinoti

Applicants – present in person

M/s Mutembei & Kimathi Advocates for Respondent – N/A

Respondent – present in person.

**HON. A. ONG'INJO**

**JUDGE**

22/11/2018