



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**SUCCESSION CAUSE NO. 512 OF 2007**

**IN THE MATTER OF THE ESTATE OF THANGWA MWINGI (DECEASED)**

**WANJERI THANGWA.....PROTESTOR**

**VERSUS**

**SALOME RUGURU MIRITU.....RESPONDENT**

**JUDGMENT**

**INTRODUCTION**

1. By way of a summons for revocation of grant dated 27th May, 2008, Salome Ruguru Miritu (hereinafter the applicant) seeks orders:
  1. That the Grant of Letters of Administration issued to Wanjeri Thang'wa on 21st day of July, 2005 and confirmed on 10th April, 2007 be revoked and the orders prayed for be granted
  2. That an order to issue declaring as null and void any transaction taken by the petitioner on the strength of the Grant confirmed on 10th April, 2007.
  3. That the cost of this application be provided for.
2. The summons is grounded on the the applicant's affidavit sworn on the 27th May, 2008.
3. The gist of the affidavit evidence is that the deceased herein died on the 19th October, 1999 and a grant of letters of administration was issued to Wanjeri Thangwa (hereinafter the respondent). The said grant is challenged as having been obtained fraudulently by the making of a false statement or by concealment of material fact.
4. The application is opposed and the respondent has sworn and filed a replying affidavit sworn on 30th June, 2008 and filed on the same day.
5. It is the respondent's case that the applicant was never married to the deceased. She was never invited to any ceremony held to solemnize the marriage between the deceased and the applicant.
6. She asserts she was the rightful person to apply for letters of administration and she denies having received any benefits in respect of the deceased's estate. The application has been brought after inordinate and inexplicable delay.

**THE APPLICANT'S EVIDENCE**

7. Directions were taken that the summons be disposed off by way of *viva voce* evidence.
8. The applicant testified that the deceased was her husband through a customary marriage since 1988. They were blessed with two children, Ruth Wanjeri Thangwa and Esther Wanjiru Thangwa.
9. The respondent was the mother to the deceased. The deceased died in 1999. The applicant produced the death certificate and an obituary advert in the "Daily Nation" of 22nd October, 1999. In the advert, she is named as the wife.

10. The applicant applied and got the burial permit which she produced in evidence together with a burial programme. In the programme she is named as wife to the deceased and the children were listed in the programme too. She also produced photographs of herself and the children during the burial and one for the deceased's brothers and sister.

11. The applicant learnt of Nyahururu Succession Cause No.76 of 2005 when she applied for gratuity which was payable to the deceased's estate. The respondent had filed the same and stopped payments. The applicant had not been involved in the filing of that cause.

12. The applicant further produced a letter from the local chief acknowledging her as the wife of the deceased and another from the District Commissioner, Kiambu. She also produced a letter from the Director of Pensions showing that the deceased was entitled to a payment of Kshs.600,022/=. She tendered in evidence birth certificates in respect of the two (2) children.

13. The applicant denied the allegations in the replying affidavit and specifically states she was a wife to the deceased.

#### **ANALYSIS AND DETERMINATION**

14. The issues for determinations are:

1. Whether the applicant was a wife to the deceased.
2. Based on the answers to 1 above, whether there was the making of a false statement or concealment of material fact when the grant in Nyahururu Succession Cause No.76 of 2005 was obtained.
3. Should the grant herein be revoked.

15. The applicant's evidence that she was a wife to the deceased is overwhelming. She has demonstrated through documentary evidence that she was recognized as a wife to the deceased as seen in the burial announcement, the funeral programme, the letter from the chief and District Commissioner, the photographs and her oral testimony.

16. This evidence is not controverted. The attempt in the replying affidavit to challenge the applicant's evidence is a feeble one and which evades to answer the real issues raised by the applicant. It is a generalised denial that leaves the applicant's evidence intact.

17. Indeed, despite evidence of proper service, the respondent failed to appear in court on the day and time set for hearing to offer alternative evidence.

18. Am satisfied that the applicant was a wife to the deceased.

19. As regards the sanctity of the grant issued to the respondent in Nyahururu Succession Cause No.76 of 2005, having found that the applicant was a wife to the deceased, it is obvious that the respondent concealed material facts before the court by failing to include the applicant as a beneficiary as a wife to the deceased. Indeed the applicant ranked higher in priority in the petitioning for letter of administration.

20. To that extent, the applicant meets the threshold set in **Section 76** of the **Law of Succession Act** for the revocation or annulment of grant. **Section 76** states:

**“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.”**

21. With the result that the summons for the revocation of the grant herein is wholly successful. The same is allowed.

22. There shall be orders in the following terms:

(a) The Grant of Letters of administration issued to Wanjeri Thangwa on 21st July, 2007 is hereby revoked.

(b) Any transaction undertaken by the said Wanjeri Thangwa on the strength of the said grant is declared null and void.

(c) That each party to bear its own costs.

**Dated, Signed and Delivered at Nakuru this 22nd March, 2017.**

**A. K. NDUNG'U**

**JUDGE**