



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO. 2394 OF 2012**  
**IN THE MATTER OF THE ESTATE OF ELIUD WANJOHI MAINA**

**RULING**

The application dated and filed on 3<sup>rd</sup> December 2015 was brought before this court by Ernest Wanjohi Maina, Emma Waithera Maina and Joseph Wambugu Nderitu being the legally appointed guardians. They seek the following orders;

1. That Anderson Ndwiga Njeri the Petitioner/Respondent by himself, his agents, servants, representatives and or employees be restrained forthwith from dealing, depositing, withdrawing or in any other manner accessing or interfering with any bank accounts held by Standard Chartered Bank Harambee Avenue being account Number 0150479003800 and fixed deposit Accounts held by the said standard chartered Bank, Account number 0308011291 held at Barclays Bank, Nanyuki Branch, Treasury Bonds/Bills in CDS Account number 07-00-00623-3 held at Central Bank of Kenya and any other property in the name of Eliud Wanjohi Maina pending the hearing and determination of this summon.
2. That Anderson Ndwiga Njeru the petitioner/ respondent herein by himself, his agents, servants, representatives, and or employees be restrained forthwith from administering, dealing disposing, charging, receiving any rental income or accessing any bank accounts, CDS accounts or in any other manner from interfering with any property which forms part of the assets of Eliud Wanjohi Maina pending the hearing and determination of this summon.
3. That the Grant of Probate of written Will issued to Anderson Ndwiga Njeru on 16<sup>th</sup> December 2013 and the certificate of confirmation of Grant issued on 21<sup>st</sup> July 2014 and any amended/rectified Grant be revoked and/or annulled forthwith and the petition filled on 17/9/2013 together with all the proceedings by the petitioner in this cause thus far be declared null and void ab-initio and be quashed forthwith.
4. That any and all acts done by the said Anderson Ndwiga Njeru pursuant to these proceedings and the obtaining of the Grant be declared null and void ab-intio and illegal and the petitioner be required to refund any funds utilized and/or revert the status of any asset dealt with back to the name and for the benefit of Eliud Wanjohi Maina.
5. That Anderson Ndwiga Njeru, the petitioner be ordered to produce to the court a full and accurate income and expenditure account of all dealings of the assets of Eliud Wanjohi Maina including the proceeds of any properties that may have been sold or monies received or withdrawn from any bank accounts, since 16/1/2013 up to date.
6. That Anderson Ndwiga Njeru the petitioner herein by himself, his agents servants,

representatives and or employees be permanently restrained from ever dealing, depositing, withdrawing or in any other manner accessing or interfering with any bank accounts held by standard Chartered Bank, Harambee Avenue, being account Number 0150479003800 and fixed deposit accounts held at the said bank and at Barclays Bank account number 0308011291, Nanyuki Branch or any other accounts held in any other banks, Treasury Bond/Bills in CDSC account number 07-00-00623-3 held by Central Bank of Kenya and any other property in the name of Eliud Wanjohi Maina.

7. That Anderson Ndwiga Njeru the petitioner herein by himself, his agents, servants, representatives and/or employees be permanently restrained from ever administering, dealing, disposing, charging, receiving any rental income operating, withdrawing, depositing or accessing any bank account, CDSC accounts or in any manner from interfering with any property which forms part of the assets of Eliud Wanjohi Maina.

8. That this Honourable Court do find that Anderson Ndwiga Njeru is guilty of willfully and recklessly making statements which are false in material particular and find him liable to pay a fine or to serve a term of imprisonment or both as it shall deem fit.

9. That this honorable court does make any other or further orders as it may deem fit to grant.

10. That the cost of this application be borne by the petitioner/Respondent.

Their application was made on the following grounds;

1. That Eliud Wanjohi Maina whose estate this succession cause is allegedly for is alive and has not died as alleged by the petitioner/respondent herein.

2. That the petitioner/Respondent Anderson Ndwiga Njeru is not a son-in-law of Eliud Wanjohi Maina and is in no way related to him whatsoever.

3. That the will and testament dated 19/5/2010 alleged to have been written by Eliud Wanjohi Maina and pursuant to which a grant of probate and confirmed Grant were issued to the respondent is a forgery and was never written by the said Eliud Wanjohi Maina.

4. That the certificate on death Alleged for Eliud Wanjohi Maina, Mary Njambi Maina and Esther Wairimu Maina are a forgery and have been obtained fraudulently by him.

5. That the contents of the chief's letter dated 23/8/2013 are false.

6. That the petitioner/respondent has frantically and fraudulently attempted to access the accounts of Eliud Wanjohi Maina at Standard chartered bank in furtherance of his fraudulent activities.

7. That the petitioner in filing the petition, willfully and recklessly misled the court by making statement which are false in material particular.

In their supporting affidavit, the applicants state that they are the son, daughter and a close family friend to the Ward. They did not know the petitioner and confirmed that he is not the son-in-law as alleged. They also confirm that the Ward is still alive as opposed to the information given to the court, that the said Ward is deceased. They also averred that the documents delivered in court, being the will and death certificate, are forgeries.

The Law of Succession dictates the grounds for revocation of a grant. The Act provides as follows at Section 76,

***“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by an 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 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) the grant has become useless and inoperative through subsequent circumstances”.***

The summons for revocation are premised on the grounds that the proceedings before the court were defective as the grant of representation relates to a person who is still alive and as such cannot fall within the jurisdiction of the Law of Succession Act. The petitioner/ respondent filed the succession cause and obtained the grant under false statements and by concealment of material facts. The fact that the petitioner misled the court that Eliud Wanjohi Maina was dead hence the need to file for administratorship when in truth the subject of these proceedings is still alive, indicates that the grant was obtained fraudulently by making a false statement. Further Section 76 of the Law of Succession Act, material concealment and defective proceedings are among the grounds for revocation or annulment of a grant. It is therefore only right to revoke the grant issued.

This court then grants the following orders;

1. That Anderson Ndwiga Njeru the petitioner/ respondent herein by himself, his agents, servants, representatives, and or employees are restrained forthwith from administering, dealing disposing, charging, receiving any rental income or accessing any bank accounts, CDS accounts or in any other manner from interfering with any property which forms part of the assets of Eliud Wanjohi Maina.

2. That Anderson Ndwiga Njeru the petitioner/ respondent herein by himself, his agents, servants, representatives, and or employees are restrained forthwith from administering, dealing disposing, charging, receiving any rental income or accessing any bank accounts, CDS accounts or in any other manner from interfering with any property which forms part of the assets of Eliud Wanjohi Maina

3. That the Grant of Probate of written Will issued to Anderson Ndwiga Njeru on 16<sup>th</sup> December 2013 and the certificate of confirmation of Grant issued on 21<sup>st</sup> July 2014 and any amended/rectified Grant is revoked and/or annulled forthwith and the petition filed on 17/9/2013 together with all the proceedings by the petitioner in this cause thus far be declared null and void ab-initio and quashed forthwith.

4. That any and all acts done by the said Anderson Ndwiga Njeru pursuant to these proceedings and the obtaining of the Grant are declared null and void ab-intio and illegal and the petitioner is required to refund any funds utilized and/or revert the status of any asset dealt with back to the name and for the benefit of Eliud Wanjohi Maina.

5. That Anderson Ndwiga Njeru, the petitioner is ordered to produce to the court a full and accurate income and expenditure account of all dealings of the assets of Eliud Wanjohi Maina including the proceeds of any properties that may have been sold or monies received or withdrawn from any bank accounts, since 16/1/2013 up to date.

6. That Anderson Ndwiga Njeru the petitioner herein by himself, his agents servants, representatives and or employees are permanently restrained from ever dealing, depositing, withdrawing or in any other manner accessing or interfering with any bank accounts held by standard Chartered Bank, Harambee Avenue, being account Number 0150479003800 and fixed deposit accounts held at the said bank and at Barclays Bank account number 0308011291, Nanyuki Branch or any other accounts held in any other banks, Treasury Bond/Bills in CDSC account number 07-00-00623-3 held by Central Bank of Kenya and any other property in the name of Eliud Wanjohi Maina.

7. That Anderson Ndwiga Njeru the petitioner herein by himself, his agents, servants, representatives and/or employees are permanently restrained from ever administering, dealing, disposing, charging, receiving any rental income operating, withdrawing, depositing or accessing any bank account, CDSC accounts or in any manner from interfering with any property which forms part of the assets of Eliud Wanjohi Maina.

8. This court declines to grant prayer number 8 that seeks that Anderson Ndwiga Njeru be found guilty of willfully and recklessly making statements which are false in material particular and find him liable to pay a fine or to serve a term of imprisonment or both as it shall deem fit. The applicants can pursue the same through the police.

No order as to costs.

**Dated, signed and delivered this 13<sup>th</sup> day of April 2017**

**R.E. OUGO**

**JUDGE**

In the presence of

Miss Muigai For the Applicant

Absent For the Respondent

Ms Charity Court clerk