

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

IN THE MATTER OF THE ESTATE OF FLORENCE WANGARI MBURU (DECEASED)

SUCCESSION CAUSE 1662 OF 2013

RULING

PLEADINGS

Florence Wangari Mburu died on 30th September 2012.

Joseph Irungu Ndichu and Nahashon Gicharu Tiria husband/widower and brother of the deceased respectively filed petition for letters of administration of the deceased's estate on 12th July 2013. The petition was Gazetted and later grant was issued on 24th October 2013 and confirmed on 30th June 2014.

On 3rd May 2016 the Objector, Wainaina Turia another brother to the late Florence Wangari Mburu filed summons for revocation and annulment of grant against the Petitioners and beneficiaries of the deceased's estate under **Section 76 of Law of Succession Act**. The grounds are that the grant was obtained fraudulently, the Petitioners concealed material facts from the Court that the 1st Petitioner married the deceased and therefore is entitled to her estate. Secondly, they concealed that the deceased had another brother, the Objector also entitled to the deceased's estate. The Objector stated he was abandoned and excluded from the deceased's burial and he later learnt that the deceased was buried at their mother's farm in Nyandarua and not at the alleged husband's home or farm. At the time the deceased's body was released from Mbagathi hospital, the 2nd Respondent, younger brother of the deceased posed as husband of the deceased as shown by annexed documents to the Objector's affidavit.

In light of these untrue circumstances that led to grant of letters of administration and confirmed grant excluding him, as elder brother to the deceased and the fact that the 1st Respondent did not prove marriage to the deceased, the grant ought to be revoked.

On 6th June 2016, the Objector/Applicant pursued hearing of the Summons for revocation *ex parte* as the Respondents were served through their advocate as shown by affidavit of service filed on 27th May 2017.

The Applicant served the application directly to the Respondents as confirmed by affidavit of service filed on 20th June 2016.

The proceedings took place on 13th September 2016.

DISPOSITION

In the absence of evidence adduced or on record to controvert the Objector/Applicants evidence on record and the fact that despite service of the summons for revocation and annulment of grant twice through Counsel and directly, the Respondents did not file Replying Affidavits and /or attend Court or have representation, this Court grants the revocation of grant application.

The 1st Respondent did not prove that he married the deceased and failed to disclose that the Objector is an elder brother of the deceased and ought to participate in the Succession proceedings as beneficiary, the grant and confirmed grant issued to him and younger brother of the deceased is revoked forthwith.

New/fresh grant to issue to the siblings of the deceased to pursue distribution of the deceased's estate equally amongst themselves except the 1st Respondent until he proves that he married the deceased.

DELIVERED DATED & SIGNED IN OPEN COURT ON 27TH JUNE 2017.

Notify

M.W.MUIGAI

JUDGE