



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**SUCCESSION CAUSE NO. 2620 OF 2006**

**IN THE MATTER OF THE ESTATE OF JOHN NYORO THAIRU (DECEASED)**

**JUDGMENT**

1. The deceased herein died on 28<sup>th</sup> January 2006. A letter from the Assistant Chief of Wangunyo Sub-Location, dated 21<sup>st</sup> September 2006, states that he was survived by a widow, Rose Wanjiru Nyoro, and five (5) children, being James Richu, Gilbert Thairu, Catherine Eunice Njoki, Christine Waithera and Charles Ng'ethe. Representation was sought in a petition lodged herein on 31<sup>st</sup> October 2006 by the widow and the first born son of the deceased. They listed the widow and the five children as survivors of the deceased, saying that he died possessed of Kiambaa/Karura/T100, shares in Kiambaa/Karura/224 and 936, and in the Barclays, Kenya Commercial and Standard Chartered banks. A grant was made to the two petitioners on 29<sup>th</sup> January 2007.
2. The grant made to the administrators was confirmed on 2<sup>nd</sup> October 2007; vide an application dated 6<sup>th</sup> May 2007. The three sons were allotted Kiambaa/Karura/T100 to hold in common; while the shares in Kiambaa/Karura/224 and 936 were allotted to the widow to hold in trust for herself and her children. The shares in the banks were shared out at varying proportions between all the children of the deceased. A certificate of confirmation of grant on those terms was issued, dated 2<sup>nd</sup> October 2007.
3. On 16<sup>th</sup> May 2016, a summons was lodged herein under section 76 of the Law of Succession Act, Cap 160, Laws of Kenya, for revocation of the grant made on 29<sup>th</sup> January 2007 and of the certificate of confirmation of grant, and for conservatory orders, by the daughters of the deceased, Catherine Eunice Njoki and Christine Waithera. From the grounds appearing on the face of the said summons, it is clear that the applicants were not concerned with the making of the grant, but rather they were aggrieved of the distribution of the estate. It is with the confirmation of the grant that they have a bone to pick with.
4. The response to the application took the form of an affidavit of one of the administrators, James Richu Nyoro, sworn on 18<sup>th</sup> July 2016, defending the orders made on the confirmation of the grant. The applicants thereafter filed a supplementary affidavit and a further affidavit. The application was disposed of orally. The applicants testified and so did James Richu Nyoro.
5. The jurisdiction granted to the court by section 76 is for revocation of grants, where:
  - a. there were issues with the manner the grant was obtained – such as where the proceedings to obtain it were defective, or there was fraud and misrepresentation, or concealment of matter from the court; or
  - b. the administrators are guilty of maladministration – for failure to apply for confirmation within the stipulated period, or fail to exercise diligence in calling in and collecting an asset or fail to provide accounts when required to; or
  - c. The grant has become useless and inoperative under the circumstances, such as where the sole holder thereof passes on.
6. The grounds for revocation of grant set out in section 76 of the Act, do not envisage a situation where a

grant is to be revoked in the event a beneficiary was disgruntled with the manner the estate was distributed. The remedy for such complaints is either review or appeal. Distribution of estates is done through a summons for confirmation of the grant. The orders made on the confirmation application are available for review or appeal. A grant will not be revoked merely because a beneficiary is unhappy with the confirmation orders.

7. I have perused the application for confirmation of grant, dated 6<sup>th</sup> May 2007. It was filed simultaneously with a consent to confirmation of grant, dated 6<sup>th</sup> May 2007, and executed by Gilbert Thairu and Charles Ng'ethe, and the two applicants. The applicants have not renounced their signatures on the consent form, in fact they have conceded to signing the same but allege that they did not understand its purport. I am persuaded that the grant herein was confirmed upon due process, as it was duly consented to by all the survivors of the deceased. I find that the challenge being posed now by the applicants is an afterthought. As stated above their remedy to the situation they find themselves lies not in revocation of the grant but in appealing the confirmation orders, and or in an appropriate application for review thereof.

8. In view of the above, I do not find any merit in the application dated 13<sup>th</sup> May 2016. I shall accordingly dismiss it, as I hereby do, with costs. I note that the landed assets of the estate are all situated within Kiambu County. The matter shall accordingly be transferred to the High Court of Kenya at Kiambu for final disposal.

**DATED, SIGNED and DELIVERED at NAIROBI this 24<sup>TH</sup> DAY OF JULY, 2017.**

**W. MUSYOKA**

**JUDGE**