



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 3110 OF 2014**

**IN THE MATTER OF THE ESTATE OF TITUS MUTIGA WAMWEA (DECEASED)**

**AGNES WANGUI MUTIGA .....APPLICANT**

**VERSUS**

**PEPETUAH MUTHONI MUTIGA.....1<sup>ST</sup> ADMINISTRATRIX/RESPONDENT**

**ANNE WANJIRU MBOGORI.....2<sup>ND</sup> ADMINISTRATRIX/RESPONDENT**

**JUDGMENT**

1. The deceased Titus Mutiga Wamwea died on 9<sup>th</sup> June 2014. He died intestate. On 19<sup>th</sup> November 2014 the respondents Perpetua Muthoni Mutiga (1<sup>st</sup> administratrix) and Anne Wanjiru Mbogori (2<sup>nd</sup> administratrix) petitioned this court for the grant of letters of administration intestate. They stated that the deceased had been survived by one widow (the 1<sup>st</sup> respondent) and six children:- Lydia Wakonyu Gitau, David Maina Mutiga, Jane Wairimu Katuga, James Murimi Wamwea, Anne Wanjiru Mbogori (2<sup>nd</sup> respondent) and Serah Wangari Wamwea. The grant was issued on 18<sup>th</sup> April 2016.

2. The deceased's estate comprised Kiambu/Municipality Block 1/253; LR No. 209/7388/182 (Uhuru Estate Phase III, Buruburu Road, House No. U14; and Plot No. 367, Mweiga in Nyeri County. In the certificate of the confirmation of the grant, the properties went to the respondents to hold in trust for the rest of the family.

3. On 8<sup>th</sup> March 2017 the applicant filed the present application seeking the revocation/annulment of the grant issued to the respondents. The basis of the application was that the applicant was the second wife of the deceased with whom she got two children:- David Maina Mutiga born on 16<sup>th</sup> July 1982 and Judy Lydia Wakonyo born on 11<sup>th</sup> November 1988. The applicant stated that their marriage was celebrated under Kikuyu customary law in 1980, following which she lived with the deceased in the house on LR No. 209.7388/182 at Uhuru Estate. She was the one who, upon the deceased's death, had paid his hospital and funeral expenses. The respondents had, however, applied for and obtained letters of administration in respect of the estate of the deceased, and had the letters confirmed, without her knowledge and consent. Her and her household had consequently been excluded from any benefit in the estate of the deceased. Her case was that the grant was revocable as it had been obtained fraudulently and by concealment of information material to the case.

4. The application was served on the respondents who neither filed any response nor attended the hearing. It follows that the factual position contained in the affidavit sworn by the applicant in support of the application was not challenged.

5. The result is that the deceased had two houses, the first being that of the 1<sup>st</sup> respondent and the second being that of the applicant. The first house had six children and the second house had two children. Under **section 52 of the Law of Succession Act (Cap 160) and rule 7(1)(e) of the Probate and Administration Rules** made under the **Act**, the respondents were under a duty to include the names and addresses of the applicant and her children in the petition which they filed for the grant of letters of administration intestate in respect of the estate of the deceased. The respondents concealed the fact of the existence of the second house (**In the Matter of the Estate of Wahome Mwenje Ngomoro, H.C. Succession Cause No. 196 of 2005 at Nyeri**). Under **section 66 of the Act and rule 26(1) of the Rules**, the applicant was ranked in the same degree with the 1<sup>st</sup> respondent when it came to applying for the grant. She had not renounced her right, and neither had she provided a written consent to the petition. It is now trite that a grant will be revoked where a person who is entitled to apply is not notified by the petitioner of his intention to apply and that person's consent to the petition is not sought (**In the Estate of Ngai Gatumbi alias James Ngai Gatumbi, NRB, H.C. Succession Cause No. 783 of 1993**).

6. It is clear to me that the intention of the respondents in quietly going to petition for the grant without reference to the applicant and her children was so that they could exclude them from benefiting from the estate of the deceased which they were entitled to. They knew the applicant's family lived in LR 209/7388/182 at Uhuru Estate which belonged to the deceased. After they obtained the grant they went on to file a suit to evict her from the house. This is how she came to learn of the grant. These citations were fraudulent. Under **section 76 of the Act**, the grant has to be revoked.

7. Consequently, I allow with costs the applicant's application dated 7<sup>th</sup> March 2017 and filed on 8<sup>th</sup> March 2017. The grant issued on 27<sup>th</sup> July 2015 and certificate of confirmation of grant issued on 18<sup>th</sup> April 2016 are hereby revoked.

8. So that this matter is not left in abeyance, and in the wider interest of justice, a joint grant is hereby issued to the applicant Agnes Wangui Mutiga and 1<sup>st</sup> respondent Perpetuah Muthoni Mutiga. Both of them, or either of them, shall be at liberty, within 60 days from today, to apply for the confirmation of the grant.

**SIGNED at NAIROBI this 14<sup>TH</sup> day of SEPTEMBER 2017.**

**A.O. MUCHELULE**

**JUDGE**

**DATED and DELIVERED at NAIROBI this 18<sup>TH</sup> day of SEPTEMBER 2017.**

**W. MUSYOKA**

**JUDGE**