



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT EMBU**

**MISC. CIVIL APPLICATION NO. 60 OF 2014**

**(In matter of the Estate of NM (Deceased))**

LWK..... APPLICANT

*VERSUS*

NM .....1ST RESPONDENT

TN.....2ND RESPONDENT

**RULING**

1. This is summons for revocation for of grant dated 1/04/2014. It is supported by the affidavit of LWK consisting of the following grounds:-

*(a) That the proceedings to obtain the grant were defective in substance.*

*(b) The grant was obtained fraudulently by making of false statement or by concealment of material facts.*

2. The respondents did not file a replying affidavit in opposition to the application.

3. The applicant states that she is a daughter of the deceased who had 4 children namely; NM, TN, LW and PK. The later disappeared from home in 1974 and has never been traced. The applicant states that she was married in 1983 but was separated from her husband in 1990. There are three issues of marriage who are under the care of the applicant.

4. Upon separation, the applicant went to her parent's home where she lived with her children. The 1st respondent who is her elder brother harassed her and chased away from home. She now lives in a rented room at Manyatta market.

5. The applicant further states that the respondents filed Runyenjes Succession Cause No. 196 of 2012 without informing the applicant. She came to learn of it after the estate had been distributed among the respondents and a 3rd party who is a stranger as follows:-

L.R. Gaturi/Githimu/[particulars withheld]

1. NM - 1.1 Ha.

2. TIN - 0.80 Ha.

3. JIN - 0.20 Ha.

6. The case of the applicant is that she is entitled to a share in the estate of the deceased. The administrators in the estate are the two respondents who are her brothers. Since she was not involved in the succession cause, she prays that the grant be annulled to allow redistribution of the estate which will take care of her interests.

7. The 2nd respondent testified in support of the applicant. He told the court that he was a co-administrator in the Runyenjes succession cause with his elder brother the 1st respondent. It was the 1st respondent who was controlling the affairs in that case and he never gave the 2nd respondent a chance to give his input in the distribution. The 1st respondent was hostile to him during the pendency of the cause and kept uprooting crops from the 2nd respondent's portion of land.

8. The 2nd respondent further testified that the said JIN is a stranger to the estate and that it is the 1st respondent who gave him a share in the estate. He supports the applicant that the grant ought to be revoked.

9. The applicant's case was supported by the 2nd respondent that she was not informed of the filing of the case and neither was she involved in the distribution. The 1st respondent was served with this application for revocation but did not file a reply. Hearing notices were served on him severally but he failed to attend court. The application for revocation of grant was therefore unopposed.

10. Section 76 of the Succession Act provides:-

*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 order or allow; 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.*

11. The respondents filed a consent to the making of grant of administration intestate purportedly signed by the applicant which was a fraud designed to deprive her of her rightful inheritance in her late father's estate. Her name was also included in Form P&A.5 and in the Chief's letter dated 18/10/2012. However, there is no evidence of service of any summons to the applicant notifying her of the existence of this cause.

12. It was held in the case of **JOSEPH MUHORO NYAGA & 4 OTHERS VS PETERSON GITHU GATHINGU [2016] eKLR** that:-

*The assertion by the applicants that they were not aware of these proceedings is in my view unchallenged and I find that the proceedings were initiated without their knowledge or consent. My conclusion is that the proceedings leading to the issuance of the grant are defective in substance and that material information was not disclosed to the court in that had the court been made aware that two persons had been chosen as administrators, it would have hesitated to issue the grant. I am persuaded that the applicant concealed crucial and relevant information to the court.*

13. From the evidence of the applicant and that of the 2nd respondent, I am satisfied that the grant in Runyenjes Succession Cause No. 196 of 2012 was obtained fraudulently by making a false statement. This includes among others the filing of the forged consent and failure to disclose the existence of the succession cause to the applicant. The law requires that all beneficiaries be involved in the filing and distribution in a succession case.

14. It is my considered opinion that the applicant has proved her case against the respondents for non-disclosure of facts material to the case.

15. It is hereby ordered as follows:-

*1. That the grant confirmed on 19/09/2013 in Runyenjes Succession Cause No. 196 of 2012 be and is hereby revoked.*

*2. A fresh grant to issue in the joint names of*

- N M*
- T I N*
- L W N*

*3. That any titles issued in pursuance to the revoked grant are hereby cancelled and that the land L.R. No. Gaturi/Githimu/[particulars withheld] reverts to the name of the deceased.*

*4. That the administrators or any of them do file an application for confirmation of grant within 30 days.*

*5. Each party to meet their own costs.*

**DATED, DELIVERED AND SIGNED AT EMBU THIS 29TH DAY OF NOVEMBER, 2017.**

**F. MUCHEMI**

**JUDGE**

**In the presence of:-**

**Applicant**

**2<sup>nd</sup> respondent**