



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

SUCCESSION CAUSE NO. 5 OF 2015

**IN THE MATTER OF THE ESTATE OF SIMON NGUTU ALIAS SIMON NGUTU KITEME
(DECEASED)**

REDEMPTA MUTEI NGUTU.....APPLICANT

VERSUS

MUTHYE NGUTU KITEME.....RESPONDENT

R U L I N G

1. **Joseph Nzomo Ngutu**, (deceased) died domiciled in **Kenya** on the **17th June, 1989**. Letters of Administration intestate (grant) in respect of his Estate were granted to **Muthye Ngutu Kiteme**.
2. On the **8th October, 2015**, **Redempta Mutei Ngutu**, the Applicant, approached this court by way of summons for revocation of grant seeking orders that: (i) She is the wife of **Joseph Nzomo Ngutu** now deceased, the first son of the deceased whose Estate is a beneficiary; (ii) The Certificate of Confirmation of grant issued to **Muthye Ngutu Kiteme** at **Mwingi Principal Magistrate's Court** on **28th November, 2012** be revoked.
3. The application is premised on grounds that: The proceedings to obtain the grant were defective in substance; The grant was obtained fraudulently by the making of false statements and concealment from court of material facts; The grant was obtained by means of untrue allegations of facts essential in point to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently and the property of the deceased's Estate has not been properly distributed.
4. Also included in the body of the application is that: The Succession Cause was clandestinely filed by the Petitioner who excluded the Applicant, a wife of **Joseph Nzomo**.
5. The application is unopposed.
6. The Certificate of Confirmation of grant issued to the Respondent herein indicates shares of heirs to the Estate of the deceased as:

Alice Mutongoi Ngutu

Virginia Mwikali Ngutu

Penina Mutindi Ngutu

Winfred Nzambi Ngutu

Properties forming the Estate of the deceased were identified as: **Plot No. Mwingi/Mbondoni/915** and **Plot No. Miguani/Mbondoni/921** were to be registered in the name of the Respondent who was to hold them for herself and in trust for other beneficiaries aforesaid.

7. The letter written by the Assistant Chief, **Kavuoni Sub-location** has the name of **Joseph Nzomo Ngutu** included as the son of the deceased. The Applicant herein adduced evidence of a certificate of marriage solemnized between **Joseph N. Ngutu** and the Applicant herein. It is indicated that at the time of solemnizing their marriage in **1999**, they were already married under the customary law.
8. This *per se* evidence that she was entitled to benefit from the Estate of **Joseph N. Ngutu**. This fact was not disclosed at the point of confirmation of grant.
9. A grant may be revoked if it established that it was obtained following concealment of something material from the court. **(See Section 76(b) of the Law of Succession Act)**.
10. In the matter of the Estate of **Thereki Wangunyu** also known as **Thareka Wangunyo HCSUCC No. 1996 of 1999** where a widow obtained a grant of representation without disclosing one of her stepchildren and some of her own children as beneficiaries, the court held that she merited the revocation of the grant but ordered that instead it would order that the stepchildren left out be included in the list of beneficiaries without interfering with the grant.
11. The grant herein was made to the Respondent in her capacity as the widow of the deceased. Guided by **Section 66 of the Law of Succession Act**, this court would still prefer the Respondent being the surviving spouse as the administratrix of the Estate. In the premises the grant issued will remain intact. However, the order confirming the grant be and is hereby revoked. In the result I proceed to make orders as follows:
 - i. *The Applicant shall have 21 days within which to file an affidavit of protest in accordance with Rule 40(6) of the Probate and Administration Rules.*
 - ii. *Consequently, a date of hearing of the arising dispute shall be fixed at the registry (Mwingi Law Court).*
 - iii. *Costs of the application shall be borne by the Respondent.*

12. It is so ordered.

Dated, Signed and Delivered at Kitui this 19th day of January, 2016.

L. N. MUTENDE

JUDGE