



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 595 OF 2014**

**IN THE MATTER OF THE ESTATE OF: MARGARITA MWITA MACHERA (DECEASED)**

**-BETWEEN-**

**GATI MAROA WANGERA.....1<sup>ST</sup> OBJECTOR / APPLICANT**

**ESTHER MBONE .....2<sup>ND</sup> OBJECTOR/APPLICANT**

**-VERSUS-**

**LUCAS MWITA MACHERA.....1<sup>ST</sup> APPLICANT/RESPONDENT**

**NYANSWI MWITA HABUBA.....2<sup>ND</sup> APPLICANT/RESPONDENT**

**RULING**

1. This ruling relates to the Summons for Revocation/Annulment of Grant dated **16/09/2015** which was taken out by the Applicants **GATI MAROA WANGERA** and **ESTHER MBONE**. The application is supported by the Affidavit of **GATI MAROA WANGERA** sworn on 16/09/2015 and filed in court together with the summons on 17/09/2015.
2. The Summons is opposed by the Petitioners/Administrators **LUCAS MWITA MACHEKA** and **NYANSWI MWITA HABUBA** through the Replying Affidavit of **LUCAS MWITA MACHERA** sworn on **03/11/2015** and filed in Court.
3. The parties upon concurrence of this court filed written submissions to the Summons herein hence resulting to this ruling.
4. I have taken the path of tracing the history of this matter and that has led me to Succession Case No. 44 of 2012 filed at the SRM'S Court at Kehancha and the Misc. Civil Application No. 278 of 2013 filed at the High Court at Kisii (hereafter referred to as **“the Kehancha case”** and **“the Kisii case”** respectively).
5. When **LUCAS MWITA MACHERA** filed the Kisii case on 03/06/2013, he through an Affidavit in support of his prayer that the grant which had been issued in the Kehancha case be revoked stated as follows:-

***“15. THAT the Grant obtained herein was obtained by way of fraud for the following reasons:-***

***i) The Respondent are not sons of the deceased;***

**ii) The lawful beneficiaries of the deceased i.e. Christine Nyanswi and Gati Marwa.**

6. But in a surprise turn of events, the said **LUCAS MWITA MACHERA** now denies that the same **GATI MARWA**, who is the first Applicant in the current application under consideration, has any interest in the deceased's estate. It is important to note that based on the *inter alia* grounds that the lawful beneficiaries to the deceased had been left out, the grant issued in the Kehancha case was revoked by the Kisii case and it will amount to one eating up his/her cake and still intending to have it for this Court to take the path taken by the said Lucas Mwitwa Macherera in opposition to the application as a serious one. My attention has also been drawn by the letter dated 11/09/2015 by the Chief Bukira North Location addressed to the Deputy Registrar of this Court on who the beneficiaries of the deceased's estate are which include all the parties in this matter.

7. I therefore find that pursuant to **Section 66 of the Law of Succession Act, Chapter 160 of the Laws of Kenya** as read together with **Rule 7(7)(a)(b) and (c) of the Probate and Administration Rules**, the Applicant's application is merited.

8. Consequently, the following orders do hereby issue:-

- a) The Grant issued on 20/07/2015 to NYANSWI MWITA HABUBA and LUCAS MWITA MACHERA be and is hereby revoked;**
- b) A fresh Grant be issued in the joint names of NYANSWI MWITA HABUBA, LUCAS MWITA MACHERA and GATI MARWA WANGERA;**
- c) The Administrators and/or any of them be at liberty to file for the confirmation of the grant within 30 days of issuance of the grant;**
- d) Once filed the application for confirmation shall be served upon all the interested parties within 7 days thereof and the matter shall be fixed for directions within 14 days of the filing of the application for confirmation of the grant.**
- e) Costs of the cause.**

Orders accordingly.

**DELIVERED, DATED and SIGNED AT MIGORI this 17<sup>TH</sup> day of MARCH 2016.**

**A.C. MRIMA**

**JUDGE**

**Delivered in the presence of:**

Mr. Nyagesoa instructed by the firm of C.M. Ayienda & Company Advocates for the Applicants.

Mr. Abisai instructed by the firm of Abisai & Company Advocates for the Respondents.

Court Clerk - Mr. Magige