



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MURANG'A**  
**SUCCESSION CAUSE NO 7 OF 2012**

**IN THE MATTER OF THE ESTATE OF KAMAU WAWERU, DECEASED**  
**ELIZABETH WAITHIRA CHEGE.....APPLICANT**

**VERSUS**

**1. GEOFFREY MWANGI THUKU**  
**2. HANNAH WANJIKU P. EKIMU.....ADMINS/RESPONDENTS**

**AND**

**1. JAMES MUCHINA WANDUTU**  
**2. MARY WANJIRU CHEGE.....INTERESTED PARTIES**

**J U D G M E N T**

1. The Applicant herein, **Elizabeth Waithira Chege**, applied by **summons dated 09.10.2012** for revocation or annulment of the grant issued on 15/02/2012 jointly to **Hannah Wanjiku P. Ekimu** and **Geoffrey Mwangi Thuku** in **Kangema PM Succession Cause No 51 of 2011**. This grant was confirmed and a certificate of confirmation issued. It is dated 15/02/2012, the very same day the grant itself was issued! The distribution ordered in the certificate of confirmation was that the only asset of the Deceased's estate, **L.R. LOC 11/MARAGI/704**, be inherited by **James Muchina Wandutu** as sole proprietor thereof. James Muchina Wandutu is the 1<sup>st</sup> Interested Party.

2. The main grounds for seeking revocation are –

(i) That the 2<sup>nd</sup> Administrator, Geoffrey Mwangi Thuku, is a stranger to the Deceased yet he falsely claimed to be a grandson of the Deceased.

(ii) That the 1<sup>st</sup> Administrator, Hannah Wanjiku P. Ekimu, was procedurally substituted in place of her husband, Michael Maina Kamau, who was the original 1<sup>st</sup> Petitioner but subsequently died before grant was issued.

(iii) That the Applicant and her sister, Mary Muthoni Kamau, who were the Deceased's children (along with the original 1<sup>st</sup> Petitioner Michael Maina Kamau) were completely disinherited.

(iv) That James Muchina Wandutu who ended up inheriting the only asset of the Deceased's estate was a stranger and was not related to the Deceased at all.

There is a supporting affidavit sworn by the Applicant.

3. The 2<sup>nd</sup> Administrator/Respondent, Geoffrey Mwangi Thuku, swore and filed a replying affidavit on 23/11/2012. He states in that affidavit that he is indeed related to the Deceased, but he does not state what that relationship is. He has also deponed that he was made a co-administrator of the estate just because there were minors involved.

4. On 06/03/2013 James Muchina Wandutu filed a replying affidavit. He deponed, *inter alia*, that the land, L.R. LOC 11/MARAGI/704, was sold to him for valuable consideration by the Administrators before confirmation of the grant. He subsequently sold off the land to **Mary Wanjiru Chege** (2<sup>nd</sup> Interested Party) who swore and filed a replying affidavit to that effect on 06/03/2013.

6. The 2<sup>nd</sup> Administrator/Respondent, Hannah Wanjiku P. Ekimu, also swore an affidavit which was filed on 06/03/2013 "to supplement" the replying affidavit filed by the 1<sup>st</sup> Administrator on 23/11/2012. She states that she is the wife of the son of the Deceased, **Michael Maina Kamau**, who was the original 1<sup>st</sup> Petitioner but who subsequently died before grant was issued. She was substituted in his place.

7. The 2<sup>nd</sup> Administrator/Respondent also deponed that her husband left her with 6 children; that she had no means of feeding and educating them; and that she therefore decided to sell part (0.3 acres) of her husband's inheritance, the land comprising the Deceased's estate, in order to maintain and educate her children. She then exchanged the remainder with another parcel of land, L.R. LOC.10/MUKANGU/1125 measuring 1.0 acre provided by the purchaser, James Muchina Wandutu.

8. The 2<sup>nd</sup> Administrator also acknowledged in her affidavit the Applicant and her sister **Mary Muthoni Kamau** as children of the Deceased entitled to inherit part of his estate. She is ready and willing, in effect, given to them a portion of L.R. LOC 10/MUKANGU/1125 as the court may direct as the Deceased's parcel, L.R. LOC 11/MARAGI/704, is no longer available, the same having been sold off, and now being in the name of a fourth party.

9. On 25/12/2013 the Applicant filed a supplementary affidavit (though she called it a further supporting affidavit) in response to all the replying affidavits. It is a long affidavit which contains no new facts but rather her arguments why the grant should be revoked.

10. On 04/04/2013 the court (Ngaah, J) directed that the summons for revocation be heard by way of *viva voce* evidence. On 01/04/2014 Ngaah, J took the evidence of the Applicant and her three witnesses. The Administrators' case started on 04/06/2014 when the 2<sup>nd</sup> Administrator commenced her testimony before Ngaah, J. She was stood down before completing her testimony-in-chief.

11. When the matter came up for further hearing before me on 04/03/2015 I granted adjournment at the request of the Administrators' learned counsel. On 17/11/2015 I refused a similar request for adjournment by the Administrators' counsel, and they closed their case without completing the testimony of the 2<sup>nd</sup> Administrator or calling any other witness. The Interested Parties never testified; nor did they call any witnesses.

12. I have read the testimonies of the Applicant and her two witnesses and also the part testimony-in-chief of the 2<sup>nd</sup> Administrator, as recorded by Ngaah, J. The Administrator's learned counsel had stated that he wished to file written submissions. Ultimately no written submissions were filed. The Applicant was acting in person.

13. This is a simple matter to resolve. The Administrators dealt with the Deceased's property, L.R. LOC 11/MARAGI/704, as if it belonged to them, selling the same even before the grant was confirmed. In the

process they ignored the interests of two of the children of the Deceased, the Applicant and her sister Mary Muthoni Kamau, who were completely disinherited in the process.

14. It matters not now that the land has changed hands twice, first going to the 1<sup>st</sup> Interested Party James Muchina Wandutu who was declared the only heir of the Deceased even though he was only a purchaser (not from the Deceased, but from the two administrators). He in turn sold off the land to the 2<sup>nd</sup> Interested Party Mary Wanjiru Chege.

15. The 2<sup>nd</sup> Interested Party will have to sort out her issues with the 1<sup>st</sup> Interested Party who sold the land to her. He in his turn, will have to sort out his issues with the Administrators who sold the land to him. The bottom line is that none of them has or had any good title to the land.

16. The proceedings in the lower court that led to the 1<sup>st</sup> Interested Party being declared the Deceased's only heir were tainted with illegality from the word go for failure to disclose to the court the existence of the Applicant and her sister as children of the Deceased. The transactions of sale and exchange of the Deceased's land between the Administrators and the 1<sup>st</sup> Interested Party amounted to gross intermeddling with the Deceased's estate. The declaration of the 1<sup>st</sup> Interested Party as the Deceased's only heir was in furtherance of an elaborate fraud whose purpose was to disinherit the Applicant and her sister. It was achieved by concealment from the court of material facts and also through untrue allegations of fact.

17. In these circumstances I have no hesitation at all in allowing the summons dated 09/10/2012 for revocation of grant in the following terms –

**(a) The grant of letters of administration intestate issued on 15/02/2012 jointly to Hannah Wanjiku P. Ekimu and Geoffrey Mwangi Thuku in Kangema PM Succession Cause No 51 of 2011 is hereby revoked.**

**(b) The order of the lower court by which the grant was confirmed of 15/02/2012 (the very same day the grant was issued!) is hereby set aside and the certificate of confirmation of grant of that date cancelled.**

**(c) The title initially issued to James Muchina Wandutu in respect to L.R. LOC 11/MARAGI/704 upon the strength of the aforesaid certificate of confirmation of grant (now cancelled), and which he subsequently passed to Mary Wanjiru Chege by sale, is also hereby cancelled.**

**(d) For the avoidance of doubt, the title to L.R. LOC 11/MARAGI/704 shall revert unto the name of the Deceased Kamau Waweru.**

**(e) The Administrators/Respondents shall pay the Applicant's costs of these proceedings.**

Those shall be the orders of the court.

**DATED AND SIGNED AT MURANG'A THIS 19<sup>TH</sup> DAY OF MAY 2016**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 20<sup>TH</sup> DAY OF MAY 2016**

