



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**  
**SUCCESSION CAUSE NO. 376 OF 2012**

**IN THE MATTER OF THE ESTATE OF MERCY WANJIRU MBITI (DECEASED)**

**AND**

**MARY WANGARI NJEGA.....PLAINTIFF**

**VERSUS**

**JANE WANJIKU MBITI.....RESPONDENT**

**RULING**

1. This cause relates to the estate of **MERCY WANJIRU MBITI** (deceased) who died on 25<sup>th</sup> May, 2005 domiciled in Nairobi. **JANE WANJIKU MBITI** a mother to the deceased petitioned for letters of administration in this cause and was appointed the administratrix by this Court on 4<sup>th</sup> December, 2012. She applied for the confirmation of grant as a sole dependant and/or beneficiary and a certificate of confirmation of grant was issued on 10<sup>th</sup> September, 2013. The only asset comprising the estate was described as shares with **Mutirithia Wa Andu Co. Ltd. Plot No. 835** which is the property that devolved to the administratrix now the respondent in this application. The application is brought under **Section 76** of **Law of Succession Act (Cap. 160 Laws of Kenya)** (and hereinafter to be referred to as the Act).

2. **Mary Wangari Njega**, the applicant herein on 9<sup>th</sup> December, 2013 took out Summons for Revocation of Grant issued herein dated 9<sup>th</sup> December, 2013 on the following grounds namely:-

- i. ***That the proceedings to obtain the grant were defective in substance.***
- ii. ***That the grant was obtained fraudulently by making of a false statement or by concealment from court of something material to the cause.***

3. In support of her application against Jane Wanjiku Mbiti, the respondent herein, the applicant swore an affidavit in support on 9<sup>th</sup> December, 2013 where she deposed that she was a beneficiary to the estate of the deceased in this cause by virtue of being her daughter in law. She has deposed that she was married to the late **BENSON KIBARA WANJIRU** who she claims was a son to the deceased in this cause. She has further deposed that the respondent herein is her grandmother in law and has accused her of locking her out together with her child **MERCY WANJIRU** from benefitting from the estate. This in her view was fraudulent and an act of concealment.

4. When this matter came up for directions on 12<sup>th</sup> May, 2015 both parties to this application chose to dispose of the application by way of written submissions and in her submissions filed through **A. N. Chomba Advocates**, counsel for the applicant, the applicant has submitted that her late husband **BENSON KIBARA WANJIRU** used to utilize the plot forming the estate herein prior to his demise. It is submitted

that the late BENSON KIBARA WANJIRU was not able to take out letters of administration in respect to the estate of his late mother, the deceased herein and that it was correct in law for the petitioner/respondent herein to apply for letters of administration of her son because the provisions of **Section 39(1)** of the **Law of Succession Act** gives her priority in the administration of the estate.

5. The applicant has nonetheless submitted that the applicant's child, MERCY WANJIRU is a dependant as a grandchild within the meaning of **Section 29 (b)** though it is conceded that the applicant herself does not consider herself a dependant of the deceased herein. It is on this basis that the applicant has urged this Court to consider that under **Section 26** of the **Law of Succession Act** there were other dependants who should be provided for in the estate herein and that because she was not provided for, the grant issued herein should be revoked to serve the ends of justice.

6. The respondent herein, Jane Wanjiku Mbiti did not file any replying affidavit to challenge what is contained in the affidavit in support of revocation of grant issued in this cause. She however, filed submissions through her counsel, Munene Muriuki Advocates who majorly submitted on matters of law. It has been submitted that the applicant has departed from her affidavit in support of revocation of grant in that she has introduced Mercy Wanjiru as dependant in her submissions without any evidence to demonstrate that fact. It is further submitted that an application under **Section 26** of the **Law of Succession Act** can only be made before the grant is confirmed and that this application is time barred by dint of **Section 30** of the **Act**. In her view, an application for revocation of grant cannot be made under **Section 26** of the **Act**.

7. The respondent has further contended that there was no concealment of anything material in the cause when the petition for letters of administration was presented. She has contended that the applicant is a stranger to the estate of the deceased and urged this court to dismiss the application.

8. I have considered the application and submissions of both counsels. The application as indicated above has been brought to this Court under **Section 76** of the **Act** and **rule 44** of **Probate and Administration Rules**. The law provides instances where a grant whether confirmed or not can be revoked. **Rule 44** of **Probate and Administration Rules** provides for the procedure upon which such an application should be presented in court and its disposal. The above section provides that any interested party can apply for revocation or the court can on its own motion revoke or annul a grant on the following grounds:-

- a. Where the proceedings to obtain the grant were defective in substance.
- b. If the grant was obtained fraudulently through false statement or concealment of material fact in the cause.
- c. Where a grant is obtained by means of untrue allegation of fact notwithstanding that the allegation was made in ignorance or inadvertently.
- d. Where a grant has been issued but the person to which the grant was issued fails within one year without reasonable cause to apply for confirmation or fails to proceed diligently in administration of the estate.
- e. Where the grant issued has become useless and inoperative through subsequent circumstances.

9. The applicant herein has cited 2 grounds (a and b) in her application. I have looked at the letter from the office of Assistant Chief Kanyekiini location which is dated 10<sup>th</sup> February, 2012 and which was filed together with the petition for letters of administration herein. The chief confirmed in his letter that the petitioner/respondent herein was the mother to the deceased and to his knowledge, the deceased was unmarried and had no family of her own. I also gathered from the death certificate No. 051653 of the deceased that she died on 28<sup>th</sup> May, 2005 aged 35 years old. In this application, the applicant has contended that she was married to the son of the deceased named BENSON KIBARA WANJIRU and exhibited the death certificate No. 048730 in her affidavit in support which showed that the said BENSON KIBARA WANJIRU died on 31<sup>st</sup> January, 2011 aged 26 years old. I have done a simple mathematical calculation to first establish if the facts presented by the applicant can be probably right. If the deceased herein died in 2005 aged 35 years, it shows that she was born in 1970 or thereabout. On the other hand Benson Kibara Wanjiru (deceased) died in 2011 aged 26 years old indicating that he was born somewhere in 1985. A simple calculation would reveal that in 1985, the deceased in this cause was aged

15 years which in my view though she was still young and possibilities of her being a mother at that age were remote, I find it was possible for her to be a mother and it is therefore possible for her to have been a mother to Benson Kibara Wanjiru.

10. At the time of demise of the deceased herein, Benson Kibara Wanjiru must have been aged 20 years old and therefore an adult. The applicant herein has stated that her late husband did not apply for letters of administration and the reasons for not doing so are unclear and unknown. The applicant has also not applied for letters of administration in respect to the estate of her husband. She has not established her status and capacity in bringing this application. I find that she has failed to demonstrate her nexus with the estate herein and there is no evidence to show that she is not a stranger to the estate as claimed by the respondent. She has contended that she was utilizing the estate for herself and her child but she did not adduce any evidence to either prove dependency or establish that Mercy Wanjiru was a daughter to the late Benson Kibara Wanjiru. I also find that there is no evidence in the first place to rebut the said chief's letter which indicated that the deceased herein left no child behind.

11. The applicant has submitted that though she was not a dependant to the estate herein, her child Mercy Wanjiru was a dependant within the meaning of **Section 29 (b)** of the **Act** and that the application is brought for purposes of **Section 26** of the **Act** which is to provide for reasonable provisions to the minor. I however, find this contention misconceived and bad in law as contended by the respondent. It is a misconception as no dependency under **Section 29 (b)** has been demonstrated. Secondly I find no nexus between Mercy Wanjiru and the deceased in this cause. I further find application bad in law on the following reasons:-

i. An application under **Section 26** of the **Act** can only be made

where a grant is yet to be confirmed by a dint of **Section 30** of the **Act**.

ii. An application of revocation of grant can only be made under

**Section 76** of the **Act** as indicated above. An application for revocation of grant if confirmed cannot invoke the provisions of **Section 26** of the **Act**.

iii. **Rule 45** prescribes the procedure under which an application under **Section 26** of the **Act** can be made and the rule is clear that such an application can only be made where a grant has been applied for but not confirmed as is in this application.

12. In the end I find that the applicant has not placed any material before this court to call for the invoking of the provisions of **Section 76** of the **Act**. None of the grounds contained therein has been demonstrated on a balance of probability. The applicant has also failed to demonstrate that she has capacity in law to bring or take out summons for revocation of grant under the law. She has failed to adduce sufficient evidence to show that she is connected to the deceased herein. The application lacks in merit and the same is dismissed with no order as to costs.

***Dated and delivered at Kerugoya this 19<sup>th</sup> day of May, 2016.***

**R. K. LIMO**

**JUDGE**

19.5.2016

Before Hon. Justice R. Limo J.,

Court Assistant Willy Mwangi

Mbugua holding brief for Munene for respondent

Ngangah for Chomba for applicant

**COURT:** Ruling dated, signed and delivered in the open court in the presence of Mbugua holding brief for Munene for respondent and Ngangah holding brief for Chomba for applicant.

**R. K. LIMO**

**JUDGE**

19.5.2016