



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO.3380 OF 2014**  
**IN THE MATTER OF THE ESTATE OF SAMUEL MBUGUA GATHERU (DECEASED)**  
**MARGARET NJERI MBUGUA.....APPLICANT**  
**VERSUS**  
**ELIZABETH WANGUI MBUGUA.....RESPONDENT**

**RULING**

1. The deceased died intestate on 20th January 2006. He was survived by his widow Margaret Njeri Mbugua (applicant) and 12 adult children, including the respondent. The respondent filed citation dated 18<sup>th</sup> December 2014 to complain that the applicant and the other 11 beneficiaries had refused to take out letters of administration intestate in the estate of the deceased. This court on 2<sup>nd</sup> June 2015 recorded a consent allowing the applicant herein to file the petition within 30 days and the matter be mentioned on 7<sup>th</sup> July 2015. The applicant filed a petition for grant of letters of administration on 7<sup>th</sup> July 2015 in which she listed all the beneficiaries of the estate as well as the assets of the estate. On 7<sup>th</sup> July 15 the applicant was ordered to petition for grant and to serve all the beneficiaries with the petition, with the parties having the liberty to cross-petition. She had not met the dateline of 30 days.

2. It is clear that on 22<sup>nd</sup> October 2015 the respondent filed her petition which was gazetted on 12<sup>th</sup> February 2016. This is what has brought about the application filed by the applicant on 9<sup>th</sup> March 2016 under certificate of urgency. In the Notice of Motion, she sought orders that the respondent's name be removed and expunged from the advertisement sent to the Kenya Gazette notice of 12<sup>th</sup> February 2016 identifying the respondent as the petitioner in this Cause and the same be replaced by her name as the petitioner; and, further, that the Deputy Registrar be ordered to submit her name as the proposed administrator of the estate of the deceased. Her application was premised on grounds that she had filed petition for grant of letters of administration intestate as ordered by this court on 7<sup>th</sup> July 2015 but was aggrieved by the mistaken gazettement of the respondent as the proposed administrator as the estate would suffer irreparable loss and damage should the mistake not be rectified.

3. A grant of letters of administration was subsequently issued to the respondent on 31<sup>st</sup> March 2016. This is despite the respondent's advocates being served on 15<sup>th</sup> March 2016 with the applicant's application dated 9<sup>th</sup> March 2016. The applicant subsequently filed summons dated 18<sup>th</sup> April 2016 seeking the revocation or annulment of the grant made to the respondent and also that the gazettement of the

respondent in the Kenya Gazette notice of 12<sup>th</sup> February 2016 as the proposed administrator of the estate of the deceased be revoked and/or annulled. She further asked that the Deputy Registrar be ordered to forward her name to be gazetted as the proposed administrator and that the court to issue an injunction restraining the respondents or her agents from in any manner interfering with the properties of the estate until the matter is heard and finalized.

4. The applicant swore an affidavit in support of the summons for revocation stating that she was unable to file for grant on time as majority of her children who are beneficiaries of the estate live out of the country and thus had difficulty getting their consents. She averred that the respondent was well aware of this court's order on 7<sup>th</sup> July 2015 directing the applicant to file for grant of letters of administration. That, despite this, the respondent went ahead to file her petition for grant of letters of administration intestate while the applicant had already filed for the same in pursuant of the court orders of 7<sup>th</sup> July 2015. She further stated that the respondent's petition was not been consented to by any of the beneficiaries of the estate and neither had the beneficiaries renounced their right to petition as required in law. It was her case that the issuance of grant of letters of administration to the respondent was unlawful, irregular and unjust and the same ought to be annulled. She informed the court that should the orders sought not be granted to her, she was apprehensive that the respondent with whom she has had bad relations would use the grant to interfere with the estate to the detriment of all the other beneficiaries of the estate.

5. The respondent opposed the summons through her replying affidavit dated 9<sup>th</sup> May 2016. She stated that the orders sought by the applicant were incapable of being granted as the applicant had not adduced any evidence to show that the grant was obtained fraudulently by making of a false statement or by concealment from the court of something material to the case. She stated that she was unaware of the applicant's petition dated 7<sup>th</sup> July 2015 when she filed hers dated 22<sup>nd</sup> October 2015 as the same was not served. Further she stated the grant had been erroneously issued on 6<sup>th</sup> January 2015 but had been corrected to read 31<sup>st</sup> March 2016. This is the reason, she argued, that there was no grant issued on 6<sup>th</sup> January 2015 that can be revoked.

6. This court ordered that the two applications dated 9<sup>th</sup> March 2016 and 18<sup>th</sup> April 2016 be heard together by way of written submissions. The submissions were duly filed. I have considered them.

7. **Section 66** of the **Law of Succession Act (Cap. 160)** outlines the order of preference on who is to administer the estate of a deceased who dies intestate. The order gives preference to the surviving spouse to administer the estate over the other beneficiaries. The court was mindful of this provision in issuing its orders of 2<sup>nd</sup> June 2015 and 7<sup>th</sup> July 2015 by allowing the applicant to petition for grant of letters of administration. The applicant in compliance with the said order duly filed her petition on 9<sup>th</sup> July 2015. The respondent, however, went ahead to also file a petition for grant of letters of administration intestate on 22<sup>nd</sup> October 2015. It is her petition that was gazetted. The applicant states that she kept checking the registry to have her petition gazetted but was told that the file had been misplaced. I note that on 25<sup>th</sup> February 2016 she wrote to the Deputy Registrar inquiring on the gazettement of the Cause, and informing the registrar of her frustration in her trying to have the matter gazetted.

8. **Rule 7(7)** of the **Probate and Administration Rules** requires that:-

**“(7) Where a person who is not a person in the order of preference set out in section 66 of the Act seeks a grant of administration intestate he shall before the making of the grant furnish to the court such information as the court may require to enable it to exercise its discretion under the section and shall also satisfy the court that every person having prior preference to a grant by virtue of that section has -**

a. **renounced his right to apply for a grant; or**

b. **consented in writing to the making of the grant to the applicant; or**

**c. been issued with a citation calling upon him either to renounce such right or to apply for a grant.”**

It is evident that the applicant had not renounced her right to apply for the grant, and had not given her consent in writing to the respondent petitioning for the grant. After she was cited by the respondent she was asked to petition for a grant. On 2<sup>nd</sup> June 2015 she was given 30 days. When the dateline was not met, on 7<sup>th</sup> July 2015 she was given an open-minded leave to petition for the grant. On each occasion, the respondent’s counsel was in court. It follows that when on 22<sup>nd</sup> October 2015 the respondent petitioned for the grant in question she was aware that permission had been given to the applicant, and not to her, to petition. She was to wait for the petition to be served on her before responding. I find that the petition that led to the obtaining of the grant in respect of the estate of the deceased to the respondent was defective in substance under **section 76(a)** of the **Act** and is hereby revoked. The petition by the applicant shall be gazetted following which the respondent, or any other beneficiary, shall be at liberty to file objection, or any other response. To that extent, the applications dated 9<sup>th</sup> March 2016 and 14<sup>th</sup> April 2016 by the applicant shall be allowed with costs.

**DATED and SIGNED at NAIROBI this 15<sup>th</sup> day of JUNE 2016.**

**A.O. MUCHELULE**

**JUDGE**

**DELIVERED AND SIGNED this 20<sup>th</sup> day of JUNE 2016.**

**W. MUSYOKA**

**JUDGE**