



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**SUCCESSION CAUSE NO. 141 OF 2014**  
**IN THE MATTER OF THE ESTATE OF AYUB KIMANI KAMAU (DECEASED)**  
**MARY WAMBUI KIMANI .....PETITIONER**  
**MILLICENT WANGARE KIMANI .....PETITIONER**  
**VERSUS**  
**MARTHA WANJIRU PAUL .....OBJECTOR**  
**RULING**

1. The deceased, **Ayub Kimani Kamau** passed away on 2<sup>nd</sup> July 2013 at the age of sixty one (61) years and on the 15<sup>th</sup> April 2014, his widow, **Mary Wambui Kimani** and daughter, **Millicent Wangare Kimani** petitioned for letters of administration intestate respecting his estate.

The daughter and her siblings were listed as the beneficiaries of the estate. The siblings included Allan Kamau Kimani, Yusuf Kamau and Maurine Dorcas Kimani.

The assets of the estate included portions of land described as Bukira/Buhirimonono 1374, 1684 and 1053 as well as Bugumbe/Isebania/507 and Suna East/Wasweta 1/3082.

2. On 17<sup>th</sup> September 2014, the grant of letters of administration instate was issued to the petitioners but is yet to be confirmed.

The reason for the delay in confirmation was apparently the present application by **Martha Wanjiru Paul** (Objector/Applicant), made by way of the chamber summons dated 17<sup>th</sup> February 2015, seeking a revocation of the grant and issuance of a fresh grant in her name and that of the petitioner, Mary Wambui Kimani .

3. The application is based on the grounds contained in the chamber summons and is amplified by the facts contained in the supporting affidavits dated 17<sup>th</sup> February 2015 and 12<sup>th</sup> June 2015, both deposed by the objector.

The main allegation by the objector is that the petitioners obtained the grant by concealment of material facts in that the objector and her siblings were excluded as beneficiaries of the estate yet the estate property known as Bugumbe/Isebania/507 (Plot 507) was held in trust by the deceased for the benefit of the entire family of their mother the late **Leah Wangare Kamau**, who was the actual owner of the plot but was registered in the name of the deceased.

The objector contended that her siblings and herself are entitled to equal share of the said Plot No. 507 thereby implying that the plot is not available for distribution to the family of their late brother alone.

4. The application was opposed by the petitioners on the basis of the facts contained in their replying affidavit dated 22<sup>nd</sup> May 2015, deposed by the second petitioner/respondent (Millicent). They contended that the grant was properly and lawfully obtained without concealment of material facts. That, the objector is not a beneficiary of the estate of the deceased as the disputed Plot No. 507 belonged to the deceased and not his late mother Leah Wangare Kamau.

The petitioners contended further that the present application was not made in good faith as the deceased never held the disputed portion of land in trust for himself and his siblings.

5. The application was pursuant to a directive of this court heard by way of oral or “viva voce” evidence and in that regard the objector (**PW 1**) testified and called two witnesses i.e. Stephen **Kimani Kamau (PW 2)** and **Samuel Kamau Warumbi (PW 3)**.

The first petitioner (**DW 1**) testified in opposition to the application and did not call any witness.

Written submissions were filed by the objector through learned counsel, **MR. Kaburi** and by the petitioners through learned counsels **Messrs Oguttu Mboya & Co. Advocates.**

6. Having considered the evidence and the rival submissions, this court found no controversy or dispute with regard to the fact that between the petitioners and the objector, the petitioners ranked first in priority for those entitled to apply for grant of letters of administration. They (petitioners) being widow and daughter respectively of the deceased were placed at a higher position than the objector in applying for the grant. They were the direct beneficiaries of the estate of the deceased. The objector being a sister of the deceased was not a direct beneficiary of his estate. However, she was treatable as a beneficiary if indeed the deceased held in trust part of the estate for his benefit and that of his siblings.

7. The objector indicated that her interest and that of her siblings in the estate of the deceased is only confined to the aforementioned Plot No. 507 by the fact that it belonged to their late mother and was registered in the name of the deceased without the knowledge of his family members.

Indeed a certificate of search exhibited herein by the petitioners marked “MWK 1” shows that the property was first registered in the name of the deceased and a title deed issued on the 14<sup>th</sup> December 1992. There is no indication in the certificate that the property was held in trust by the deceased.

The objector implied that the registration of the property in the sole name of the deceased was neither proper nor lawful in as much as the property belonged to their late mother who wished that it be shared equally among her children thereby granting each of the children a beneficial interest in the property.

8. Although this is not a land dispute, the ownership of the material Plot No. 507 plays a key role in the determination of this application.

Under S.47 of the Law of Succession Act and Rule 73 of Probate and Administration Rules, the court would have necessary jurisdiction to make appropriate orders on immovable property subject of a succession cause.

In the effort to prove that the material plot was not in effect the property of the deceased solely, the objector produced a copy of the relevant green card (P.Ex 1) which showed that the property was registered for the first time in the name of Leah or Lea Wangari Kamau, on the 25<sup>th</sup> June 1982 before it was lastly transferred to the deceased on 14<sup>th</sup> December 1992 as a personal representative of the said Leah Wangari Kamau (deceased). It may be noted that the grant of letters of administration intestate respecting the estate of Leah Wangari Kamau was issued to the deceased on 2<sup>nd</sup> December 1992.

9. It would therefore follow that the registration of the plot in the name of the deceased on 14<sup>th</sup> December 1992 was not a first registration as depicted in the certificate of search exhibited herein by the petitioners and marked “MWK 1”. It would also follow that the deceased improperly and unlawfully registered the property in his sole name and deliberately omitted to indicate that he was holding the same in trust. The certificate of confirmation of grant obtained by himself at the Migori Court showing that he was the sole beneficiary of the estate of his late mother could not have been proper and lawful given that he was not the only child of his late mother. The grant obtained in that court and the certificate of confirmation of grant which followed it were clearly obtained by concealment of material facts on the part of the deceased. It is instructive to note that both the grant and the certificate of confirmation were issued in December 1992 i.e the grant on the 2<sup>nd</sup> December 1992 and the certificate on 4<sup>th</sup> December 1992. It is also within the same month and year that the material property was transferred to the deceased. This was not a coincidence but a well calculated transaction to deprive the siblings of the deceased of their rightful inheritance.

10. Surprisingly, the fraudulent transaction was carried forward by the petitioners when they petitioned for grant of letters of administration respecting the estate of the deceased by presenting him as the sole proprietor of the material property and omitting to include the objector and others a beneficiaries yet they were clearly entitled to a share of the property by virtue of its ownership by their late mother.

Further, notwithstanding the dispute over the property which arose in the year 2008 and which was determined by the Magistrate’s Court at Kehancha in favour of the objector, the petitioners went ahead to apply for the disputed grant without including the objectors and others as beneficiaries.

11. The court decree (P.Ex 2) dated the 18<sup>th</sup> January 2008 and issued on 9<sup>th</sup> July 2014, showed that the material Plot No. 507 was to be shared equally among the family members i.e. the children of the late Leah Wangare Kamau. It was thus made clear that in so far as the deceased held the property for his own benefit and that of his siblings, the siblings became beneficiaries of his estate and ought to have been included as such when the petitioners petitioned for the disputed grant.

The statement attributed to the deceased (P.Ex 5) was not at all or substantially disputed by the petitioners. It was an indirect acknowledgement that the deceased was holding the material property in trust for himself and his siblings.

12. Indeed the present application was not substantially disputed by the petitioners. They conceded that the material property belonged to the mother of the deceased before it was transmitted to the deceased by dint of the succession cause at the Migori Court and as observed hereinabove the said succession cause proceeded under false representation of facts by the deceased.

In the present succession cause, false representation of facts and/or concealment of material facts was the tactic applied by the petitioners in obtaining the disputed grant.

In the circumstances, this court must and hereby exercises the powers conferred to it under S.76 of the Law of Succession Act by revoking the grant issued to the petitioners dated 17<sup>th</sup> September 2014 and ordering that a fresh grant be issued in the joint names of the first petitioner, the second petitioner and the objector for purposes of protecting her interest and that of her siblings in the material Plot No. 507 only.

**J.R. Karanjah**

**Judge**

**[ Read and signed this 14th day of June 2016]**