



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. 679 OF 2014

**IN THE MATTER OF THE ESTATE OF MAGDALINE WAKABIA NJOGU alias WAKABIA
NJOGU (DECEASED)**

AND

SIMONETA MUTHONI KABATA.....1ST APPLICANT

WAMWEA KAMONDU GICOB I.....2ND APPLICANT

VERSUS

JOHN MUTHIKE MUCHIRI.....RESPONDENT

RULING

1. **SIMONETA MUTHONI KABATA** and **WAMWEA KAMONDU GICOB I** the applicants have taken out Summons for Revocation of Grant dated 21st January, 2015 to revoke a grant of letters of administration issued on 12th November, 2009 to **JOHN MUTHIKE MUCHIRI** the respondent herein. The grounds upon which the applicants are seeking to annul the grant are as follows:-

(i) That the proceedings to obtain the grant were defective in substance.

(ii) That there was concealment from the court of material facts.

(iii) That the grant was obtained by means of untrue allegation and that the grant was issued inadvertently.

2. The applicants have grounded their grounds on the Supporting Affidavit of **SIMONETA MUTHONI KABATA** sworn on 21st January, 2015 where she has raised the following pertinent issues:

(a) That the applicants are the only children (daughters) to the deceased who died on 31st May, 1997.

(b) That the estate comprised that property known as Kirinyaga/Gathigiriri/976.

(c) That they petitioned for letters of administration for their father's estate in Kerugoya H.C. Succ. Cause No. 653/13 which grant was confirmed on 20th May, 2014 and that they did so without prior knowledge to this cause.

(d) That the respondent is not a child to the deceased and filed for letters of administration secretly.

3. The Respondent filed no response to this application but through Mr. Ngangah his learned counsel, he urged this Court to nullify both grants so that parties in this cause can ventilate their rights.

4. The application before court is uncontested. I have looked at the petition presented by the respondent when petitioning for letters of administration and note that he presented the petition as a grandson to the deceased. In the presence of the applicants as the children of the deceased and in light of clear provisions of **Section 66** of the **Law of Succession Act**, it is obvious that he was not well placed to petition for letters of administration. I also find that he concealed from court the material fact that the deceased was survived by two children who are the applicants herein. The court was not given the full information when issuing the grant which rendered it a nullity.

5. This Court invokes its powers under **Section 76** of the **Law of Succession Act** to revoke the grant issued to the respondent herein on 12th November, 2009 and confirmed on 20th August, 2010. All transactions done in respect to that grant in regard to that property known as **KIRINYAGA/GATHIGIRIRI/976** are hereby reversed and ordered to be cancelled. The County Lands Registrar is directed to revert back the registration of the property to the name of the deceased pending the determination by this Court on who is going to inherit the property.

6. This Court was made aware of another parallel cause No. Kerugoya H.C. Succ. Cause No. 653 of 2013. The grant in that cause was issued due to an inadvertent mistake because a grant in respect to a deceased person can only issue once. There can never be two parallel causes in respect to one estate of the same deceased person. The grant issued in that cause shall therefore be revoked as well at this Court's own motion under **Section 76** of the **Law of Succession Act Cap. 160**. The two files are ordered to be consolidated for further orders and directions. It is so ordered.

Dated and delivered at Kerugoya this 9th day of June, 2016.

R. K. LIMO

JUDGE

9.6.2016

Before Hon. Justice R. Limo J.,

Court Assistant Willy Mwangi

Maina for applicant present

Ngangah for Respondent absent

John Muthike Muchiri present

COURT: Ruling signed, dated and delivered in the presence of Maina for the applicant and John Muthike Muchiri in person.

R. K. LIMO

JUDGE

9.6.2016