

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2591 OF 2012

**IN THE MATTER OF THE ESTATE OF LUSIAH KABUI NGARA alias KABUI NGAARA
(DECEASED)**

RULING

1. The deceased herein died on 21st October 1993.
2. Representation to his estate was sought in Kiambu SRMCSC No 775 of 1994, in a petition lodged in that cause by Simon Ngara Kabai, in his alleged capacity as a son of the deceased. The petitioner listed himself as the sole survivor of the deceased. The deceased was said to have died possessed of Ndeiya/Makutano/403 and money sitting in an account at Barclays Bank, Limuru branch.
3. A grant was accordingly made to the petitioner on 20th December 1995. The administrator died before the grant was confirmed and his place was taken by his widow, Esther Nungari Ngara, and a grant of letters of administration intestate was duly made to her on 30th December 2004. The new administrator then filed an application for confirmation of grant dated 29th December 2005. The grant was eventually confirmed on 11th May 2011. The estate was wholly devolved upon the widow of the first administrator, Simon Ngara Kabai, in her capacity as such.
4. On 30th October 2012, the summons for revocation herein, dated 15th October 2012, was filed by Monica Njeri and Margaret Mithiri. They complained that they had been left out of the administration and distribution of the estate of their deceased mother in Kiambu SRMCSC No 775 of 1994. They asserted that it was a lie that the deceased had been survived only by Simon Ngara Kabai for in total she had five children.
5. There is an affidavit of service on record sworn on 26th November 2012, evidencing service of the application on the respondent administrator on 13th November 2012. I am satisfied from its contents that there had been proper service of the application. Despite service, the respondent did not file any papers in reply. The application is therefore unopposed.
6. I directed on 11th February 2015 that the application be disposed of by way of written submissions. The applicants did file their written submissions. The same do not dwell on any points of law for the written submissions merely analyse the facts as set out in the affidavits filed in support of the application.
7. As the allegations made in the affidavits of the applicants have not been controverted, I am satisfied that the deceased had been survived by other individuals other than Simon Ngara Kabai. Consequently, the grant was obtained on a lie that the said Simon Ngara Kabai was the sole survivor of the deceased. The proceedings to obtain the grant were therefore defective and founded on fraud, and ran afoul of section 76 of the Law of Succession Act, Cap 160, Laws of Kenya.
8. The orders that I am disposed to make are:-
 - (a) **That the grant of letters of administration intestate made in Kiambu SRMCSC No 775 of 1994 is hereby revoked;**
 - (b) **That the orders made on 29th December 2005 confirming the said grant are hereby vacated or set aside, and the certificate of confirmation of grant generated from the same is**

hereby annulled;

(c) That all transactions made on the basis of the said certificate of confirmation of grant are hereby nullified;

(d) That the court file in Kiambu SRMCSC No 775 of 1994 shall be returned to the Kiambu registry with directions that a fresh grant of letters of administration intestate in the estate of the deceased shall issue out of the cause to Esther Nungari Ngara, Monica Njeri and Margaret Mithiri;

(e) That the new administrators or any one of them shall thereafter apply for the confirmation of the grant to be issued to them under (d) above; and

(f) That the applicants shall have costs of the application herein.

DATED, SIGNED and DELIVERED at NAIROBI this 22ND DAY OF JULY, 2016.

W. MUSYOKA

JUDGE