



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 431 OF 2013**

**IN THE MATTER OF THE ESTATE OF KARIUKI KAMAU (DECEASED)**

**HANNAH WANGARI KIMANI**

**ALICE WANJIKU KIMANI**

**MARY WANJIKU CHEGE.....BENEFICIARIES/APPLICANTS**

**JANE WAMBUI KARIUKI**

**MARGARET NJOKI KARIUKI**

**AND**

**HANNAH WAITHIRA MWANIKI.....ADMINISTRATOR /RESPONDENT**

**R U L I N G**

1. Kariuki Kamau whose Estate is in issue died on 7<sup>th</sup> May, 1997. One of the widows, Hannah Waithira Mwaniki (hereinafter referred to as the Administrator/Respondent), successfully petitioned Senior Principal Magistrate's court, Limuru in succession cause No. 229 of 2012 for letters of Administration intestate indicating that the deceased was survived by the following:

- 1) Hannah Waithira Mwaniki - Widow
  - 2) John Gitau - son
  - 3) James Njoroge - son
  - 4) Ibrahim Mwangi - son
  - 5) Joseph Kabucho - son
  - 6) Alice Wanjiku Kariuki - Daughter
  - 7) Esther Njeri Ndungu w/o - daughter
- Mary Kasana Suromo - daughter

The grant of letters of Administration intestate was issued to the Respondent on 8<sup>th</sup> February, 2013.

2. On 31<sup>st</sup> March, 2015 Hannah Wangari Kimani, Alice Wanjiku Kimani, Mary Wanjiku Chege, Jane Wambui Kariuki and Margaret Njoki Kariuki (hereinafter referred to as the Applicants) filed summons for revocation of the Grant.

3. The application is premised on grounds that the Grant was obtained fraudulently by concealment of the fact that the consent of the Applicants was not obtained; that the proceedings to obtain the grant were defective in substance *ab initio*; that the Applicants have been excluded from the estate and in particular the members of the deceased's second house, from the administration affairs of the deceased's estate.

4. In her supporting affidavit sworn on 24<sup>th</sup> March, 2015 Hannah Wangari Kimani on behalf of the other four Applicants, averred that they are daughters of the deceased from the 1<sup>st</sup> house who survived the deceased as follows:

- 1) Elizabeth Nyokabi Kariuki ( now also deceased) – 1<sup>st</sup> Widow
- 2) Hannah Wangari Kimani - Married Daughter
- 3) Alice Wanjiku Kimani - Married Daughter
- 4) Wamaitha Kabucho (deceased) - Married Daughter
- 5) Mary Wanjiru Chege - Married Daughter
- 6) Jane Wamui Kariuki - Married Daughter
- 7) Margaret Njoki Kariuki - Married Daughter
- 8) Esther Njeri Ndungu w/o Peter Ndungu Kariuki - Daughter-in-law (deceased)

5. The Respondent is the Applicants' step-mother and whose members survived the deceased as follows:

- 1) Hannah Waithira Mwaniki - Widow
  - 2) John Gitau - son
  - 3) James Njoroge Kariuki - son
  - 4) Wairimu Kariuki (deceased) - unmarried daughter
  - 5) Ibrahim Mwangi - son
  - 6) Joseph Kabucho - son
  - 7) Alice Wanjiku Kariuki - Daughter
  - 8) Esther Njeri Ndungu w/o - Daughter
- Mary Kasana Suromo - Daughter

6. The Applicants contended that they were not notified when the Petition was filed in 2012 or when the certificate of grant was confirmed on 24<sup>th</sup> September, 2014. That they came to learn of the Petition when she visited the office of Limuru Dairy Framers Society Ltd to pursue the deceased's shares held in the said Company and was duly informed that the Respondent had already pursued them as the duly appointed Administrator of the estate.

7. The Applicants alleged that the Respondent had deliberately and fraudulently held out herself and the members of the second house as the only surviving beneficiaries of the deceased. That she had lied as to the value of the deceased's property which was disclosed as Kshs.100,000/= while the true value of the said assets exceed the sum of Kshs.5,000,000/= and hence the Limuru subordinate court did not have jurisdiction to issue the said Grant.

8. The Applicant further alleged that the Grant of Probate herein was based on deliberate concealment of material particulars necessary for the Court's determination, and is vitiated by fraud, misrepresentation and irregularities. The Applicants therefore urged the court to annul and/or revoke the Grant of Probate and the Confirmation thereof.

9. Mr. Wachira learned Counsel for the Applicants submitted that in the year 2015, the Applicants discovered that the Respondent had on or about 19<sup>th</sup> December, 2012 taken out Administration proceedings before the Subordinate Court in Limuru in Succession Cause No. 229 of 2012 whereof a Grant was eventually issued. That the Respondent deliberately left out the names of the first house while she filled Form P&A 5 and only listed her own children as the deceased's beneficiaries.

10. Mr. Wachira argued that there was no consent sought from the Applicants, or citations served upon them notifying them of the filing of the Petition or summons for Confirmation. That the mode of distribution set out in the Affidavit in support of summons for confirmation of grant was not upon any consultation with the Applicants. Further that it was fraudulent in nature and not in recognition of the property shares of all the deceased's true beneficiaries and further that it omitted some of the deceased's assets and only listed one.

11. Mr. Wachira asserted that the Probate and Administration affairs of the estate of the deceased were conducted secretly by the Respondent. He contended that the Applicants were side lined and completely excluded by the Respondent against the Law. That the Applicants as persons beneficially entitled to the deceased's estate, had a right to participate in the Petition for Grant of Letters of Administration in respect of the estate.

12. Mr. Wachira urged the court to annul all steps so far taken pursuant to the Certificate of Confirmation of Grant issued to the Respondent, and prayed that the process of Administration of the estate of the deceased do commence *denovo* with proper representation for both houses. He urged that the administrative affairs of the estate of the deceased are not complete and hence the orders sought hereof, will not cause any inconvenience, prejudice or hardship to any of the deceased's lawful beneficiaries.

13. I have perused the pleadings and note that the Respondent, though served has failed to enter appearance or file a response to the summons for revocation. The Summons is therefore unopposed.

14. Upon perusing the pleading and submissions on record I find that the overarching issue for determination is whether the grant ought to be revoked or annulled for the reasons set out by the Applicant. It is imperative to note that the law gives this court wide discretion to revoke or annul a grant issued by the court, whether the said grant has been confirmed or not.

15. The circumstances that can lead to the revocation of grant have been set out in **Section 76 Law of Succession**. For a grant to be revoked either on the application of an interested party or on the court's own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.

16. A grant may also be revoked if the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the Estate. See - **Matheka and anor v Matheka [2005] 1 KLR pg 456**. It may also be revoked if it can be shown to the Court that the person to whom the grant has been issued has failed to produce to the Court such inventory or account of administration as may be required.

17. From the evidence adduced in the affidavit, it is clear that the Petitioner did not seek the consent of the Applicants herein, nor did she disclose their names and interest in the estate to the court, during the process of petitioning for the grant vide Succession cause No. 229 of 2012 and which was confirmed on 24<sup>th</sup> September, 2014.

18. Having considered the submissions by the Applicants' counsel and taking into account the evidence of the Applicants in the affidavit, it is my conclusion that, indeed, the Petitioner obtained the grant of Letters of Administration by means of untrue allegation of facts essential in point of law to justify issuing of the grant.

19. I have deliberately left out the question of properties said to have been omitted from the list of distribution as an issue that can be interrogated during the hearing of confirmation of grant. The value of the property was stated as Kshs.100,000/= but no material has been placed before this court upon which the court can base the value of the subject property. From the lower court record I also find no evidence of confirmation of grant after it was made on 8<sup>th</sup> February 2013.

20. In sum therefore, I find that the Respondent did fraudulently obtain the said grant bearing in mind that there are other beneficiaries in the estate who were not included in the list of beneficiaries and whose names were not disclosed to the court. By so doing the Respondent withheld material facts which were very important as far as grant and confirmation of Letters of Administration is concerned.

21. I made reference to the case of **Civil Appeal No. 2 of 2014, Musa Nyaribari Gekone and 2 others vs Peter Miyienda and Another** in which the Court of Appeal upheld the ruling and the orders of the High Court stating that:

**“We think that the learned Judge was right to hold as he did that the 1<sup>st</sup> appellant should have disclosed when applying for the grant of letters of administration or when seeking its confirmation.”**

In that case the court was referring to the nondisclosure of the existence of other beneficiaries.

22. In my view the law requires that all the deceased's children whether alive or dead, whether male or female, married or unmarried be listed in an application for grant of letters of administration. Failure to do so, any omitted dependant has a right to challenge the grant on such a ground. See **Stephen Marangu M'itirai vs Silveria Nceke & 4 others [2015] eKLR** in the matter of the estate of the late **M'itirai Kamakia Alias Ihirai Kamakia**.

23. For the foregoing reasons, I find in favour of the Applicants in the application dated 31<sup>st</sup> march 2015 and order that the grant of Letters of Administration issued on 8<sup>th</sup> February, 2013 to the Petitioner, Hannah Waithira Mwaniki be and is hereby revoked.

There are no orders as to costs.

**SIGNED DATED and DELIVERED** in open court this **27<sup>th</sup> day of October, 2016**.

**L. A. ACHODE**

**JUDGE**

**In the presence of .....Advocate for the Applicants**

**In the presence of .....the Respondent**