



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**PROBATE AND ADMINISTRATION DIVISION**  
**SUCCESSION CAUSE NO. 1817 OF 2005**  
**IN THE MATTER OF THE ESTATE OF PETER MWANGI NJOROGE (DECEASED)**

**JAMLECK MAINA NJOROGE .....OBJECTOR**

**- Versus -**

**MARY WANJIRU MWANGI.....RESPONDENT**

**R U L I N G**

1. The deceased to whose Estate these proceedings relate is Peter Mwangi Njoroge, who died on 10<sup>th</sup> February 1983 while domiciled in Kenya. Letters of administration intestate of all his Estate were issued to his widow Mary Wanjiru Mwangi, (hereinafter the Respondent), on 7<sup>th</sup> November 2005 and confirmed vide certificate of confirmation of grant dated 3<sup>rd</sup> July, 2007.

2. On 2<sup>nd</sup> October 2014 Jamleck Maina Njoroge, (hereinafter the Objector), filed summons for revocation of the said grant under **Rule 44** and **73** of the **Probate** and **Administration rules** in his capacity as one of the beneficiaries of the Estate. In the said summons the Objector alleged that:

- (i) The grant was obtained fraudulently by making false statement and/or by concealment from the court of material facts;
- (ii) The proceedings to obtain the grant were defective and incompetent in substance, and
- (iii) The grant was obtained by means of untrue allegations of a fact essential in point of law to justify the grant.

3. In the grounds of the summons the Objector states that he is the brother of the deceased and the Respondent, Administratrix is his sister-in-law. He alleges that the Grant of letters of administration intestate in the Estate of Peter Mwangi Njoroge issued to the Respondent and confirmed on 3<sup>rd</sup> July 2007, was obtained fraudulently by making of a false statement and concealment from court, of material information to this case.

4. In particular the objector states that the Respondent did not reveal to the court that land parcel No. LOC 10/Koimbi/297 and land parcel No. LOC 10/Koimbi/T.327 were not available for distribution to the Estate of Peter Mwangi Njoroge (deceased), since they belonged to the whole family of Nelson Njoroge Waithanji (deceased) who was his father. The Objector states that the Respondent filed succession cause

No. 1817 of 2005 in the High Court at Nairobi secretly, to inherit the Estate of the deceased. That this was in total disregard of the judgment of the court in District Officer's case No. 47 of 1983 given in Thika Resident Magistrate's court. In the judgment the court ordered that the two parcels of land belonged to their father and should be subdivided and distributed among the siblings of the deceased. The proceedings adverted to have been annexed to the supporting affidavit.

5. The Objector further asserts that their father had the two properties registered in the name of the deceased during the land demarcation and consolidation exercise, because he was away in detention camps during the Mau Mau emergency. Further that two properties were in the same scheme and could not be registered under one name, hence the registration of Peter Mwangi Njoroge in the above stated property on behalf of his father Nelson Njoroge Waithanji.

6. The Objector states that Nelson Njoroge Waithanji referred the issue to the Panel of Elders in District Officer's case No. 47 of 1983, whose award was subsequently adopted as the judgment of the court at Thika. It was ordered that land parcel No. Loc 10/Koimbi/297 currently registered in the name of Peter Mwangi Njoroge should be transferred to Nelson Njoroge Waithanji to be sub divided and distributed to each of his sons in equal shares. That plot No. Loc 10/Koimbi/T.327 also registered in the name of the Peter Mwangi Njoroge be transferred to Nelson Njoroge Waithanji. It is the Objector's averment that the Deceased died before the transfer and subdivision were carried out.

7. The summons is supported by the affidavit sworn by the Objector on 1<sup>st</sup> October 2014 in which he reiterates what is set out in the grounds of the summons for revocation. It is his assertion that he and the entire Estate of Nelson Njoroge Waithanji stand to suffer irreparable loss if the orders sought are not given.

8. In her replying Affidavit, the Respondent deponed that the Objector cannot, by any stretch of imagination, be deemed to be a beneficiary of the deceased's Estate because he is a brother of the deceased and that what he is claiming is the dissolution of the alleged trust which cannot be done in intestate proceedings. She asserts that the Objector has all along been aware of this matter since at the time of seeking relevant land Control Board Consent to have the confirmed grant registered, he strongly opposed the move but the District Officer Kahuro over-ruled him.

9. The Respondent further contended that when the matter was duly gazetted, nothing would have prevented the Objector from raising an objection within the stipulated time if he had so wished. That since the Objector was not a child of the deceased, she was not under any duty to cite or inform him of those proceedings, and that the judgment in Thika DO Case No. 47 of 1983 cannot be used to grant the Objector a cause of action against the Estate of the deceased.

10. The issue for determination is whether the assets distributed as the Estate of the deceased herein belonged to the Estate of his father Nelson Njoroge Waithanji and were therefore not available for distribution as the Estate of the deceased herein and whether for that reason, the grant issued to the Respondent should be revoked.

11. 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.

12. 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.

13. Clearly the Respondent concealed from the court material facts concerning the Estate under distribution. She concealed the proceedings of the Resident Magistrate's court in Thika and the fact that the two properties, Loc 10/Koimbi/297 and Loc 10/Koimb/T.327 belonged to the Estate of Nelson Njoroge Waithanji and were not therefore, available for distribution as the Estate of Peter Mwangi Njoroge the deceased herein.

14. The summons for revocation was disposed of by way of written submissions by the parties' own choice. Learned counsel Mr. Kinuthia for the Objector reiterated the Objector's averments in his submission while Mr. Warima learned counsel for the Respondent submitted that the Objector lacked locus standi since he had not obtained Letters of Administration to represent Nelson Waithanji's Estate. He also submitted that since he had raised issues of trust he should have filed his claim in the Environment and Land Court through a civil case.

15. Mr. Warima seemed to labour under the illusion that the Objector is a son of the deceased's brother, while all the proceedings and paragraph No. 2 of the Objector's supporting affidavit states that he is the brother of the deceased. From the record the objector and the deceased were brothers and were sons of Nelson Njoroge Waithanji. It is also not disputed that Nelson Waithanji's land, being two plots known as No. Loc 10/Koimbi/297 and Loc 10/Koimb/T.327, was held in trust for the rest of the family by the deceased. The issue of the trust is Res judicata having been determined by the Resident Magistrate's court in DO's case No. 47 of 1983 at Thika and there being no appeal therefrom.

For the foregoing reasons the summons for revocation dated 1<sup>st</sup> October 2014 succeeds and I order as follows:

- i) The grant and certificate of confirmation thereof issued on 7<sup>th</sup> November 2005 and confirmed on 3<sup>rd</sup> July, 2007 are hereby revoked;
- ii) That the subdivision following from the confirmed grant is hereby revoked.
- iii) The Estate is returned to status quo ante.

**SIGNED DATED and DELIVERED** in open court this 17<sup>th</sup> day of **March 2015**.

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**L. A. ACHODE**

**JUDGE**