



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**SUCCESSION CAUSE NO. 445 OF 2013**

**In the matter of the Estate of SABASTIAN NGUTU WAGANAGWA Alias NGURU WAGANAGWA**  
**(Deceased)**

ANISIA GATARA RUVIO.....APPLICANT

VERSUS

CATHERINE GICUKU NJERU.....RESPONDENT

**R U L I N G**

The applicant in her application dated 5/11/2014 seeks for the following orders:-

1. *That pending the hearing of REVOCATION proceedings herein the administrator/respondent herein, Niceta Thaara Nguruto, Isabella Wanjuki Njeru and Marie Njoki Nderi, their agents and or servants and any body working through them be restrained from evicting, entering, working or in any other manner interfering with the applicant's quiet occupation of land parcel No. KAGAARI/WERU/1073.*
2. *That pending the hearing and determination of revocation proceedings herein the honourable court be pleased to issue prohibitory order to be registered against land parcel No. KAGAARI/WERU/1073.*
3. *That pending the hearing and determination of Revocation proceedings herein the honourable court do stay any sub-division, transfer, waste, dealing and or any alteration in respect of the current registration and status quo in land parcel No. KAGAARI/WERU/1073.*

The applicant argues that she has filed summons for revocation of grant issued to the respondent in Runyenjes Succession Cause No. 130 of 2013.

The applicant states in her affidavit that she is the elder sister of the deceased Sebastian Ngutu Waganagwa alias Nguru Waganangwa. That the deceased had a daughter by the name Niceta Thaara Nguruto born by a woman who was married to him.

The respondent one Isabella Wanjuki and Marie Njoki who were given shares in the estate are said to be strangers. The applicant claims entitlement to her brother's estate on grounds that her late father told her to inherit the land of the deceased while he shared his own to her brothers. It is her contention that she resides on the said land and that it should be preserved pending hearing and determination of the summons for revocation of grant.

AThe respondent in her replying affidavits sworn on 24/12/2014 and 19/12/2014 avers that the deceased

has three daughters surviving him namely Niceta Thaara, Isabela Wanjuku and herself (Catherine Gichuku). The respondent filed a succession cause at Runyenjes No. 130 of 2013 where she was issued with a grant of representation to the estate of the deceased. The grant was confirmed and land distributed to the daughters of the deceased. The applicant and her brother had filed another Succession Cause at Embu High Court No. 436 of 2013 where the two are seeking to inherit from their deceased father.

According to the respondent, the applicant is just being greedy wanting to inherit from both her father and from her brother. The respondent also states that she lives on the land of her deceased's father. She asks the court to dismiss the application.

Upon hearing the arguments of both parties, I am not convinced that the respondent is just a daughter of a woman married to the deceased and that Niceta Thaara and Isabella Wanjuku are strangers to the estate. One Marie Njoki is said to be a creditor to the estate having financed the filing of the succession proceedings.

It is not in dispute that the applicant is a sister to the deceased and that she has applied for revocation of grant yet to be heard. There is evidence from the respondent that the deceased was survived by three daughters who include the respondent, Niceta and Isabella. It is also not disputed that the respondent is the administrator of the estate in succession cause No. 130 of 2013. Neither is it in dispute that the applicant seeks to inherit her father's property in Succession Cause No. 436 of 2013.

The law regarding priority in succession gives preference to the children of deceased as opposed to siblings. The applicant has already admitted that Niceta Thaara is a daughter of the deceased. She disputes that the respondent and Isabella are not children of the deceased.

The issue of the applicant residing on the land and that of the capacity of Niceta and Isabella require to be proved or disapproved through tested evidence. The law gives every party a right to be heard.

For the foregoing reasons I find it appropriate that the estate of the deceased be preserved so that the summons for revocation are heard and determined. The court therefore allows the application in terms of prayers 2, 3 and 5. The applicant is hereby directed to fast tract the hearing of the summons for revocation.

There will be no order as to costs.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 23RD DAY OF APRIL, 2015.**

**F. MUCHEMI**

**J U D G E**

**In the presence of:-**

- 1. Ms. Muthoni for Applicant**
- 2. Applicant present**