



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 184 OF 2002**

**(In the matter of the estate of BLASTO MWANIKI Alias PLASTO KANGAVIO - Deceased)**

**ESTHER WAMBETI NDWIGA .....PETITIONER/RESPONDENT**

**VERSUS**

**EPHANTUS NYAGA MWANIKI.....1ST APPLICANT**

**JESEE MWANIKI NJIRU.....2ND APPLICANT**

**R U L I N G**

This is a ruling on summons for revocation of grant dated 16/10/2006 brought by the applicants Ephantus Nyaga Mwaniki and Jeseo Mwaniki Njiru seeking to revoke the grant issued to the petitioner Esther Wambeti Ndwiga on 28/4/2014. The applicants rely on the following grounds:-

- 1. That the proceedings to obtain the grant were defective in substance.*
- 2. That the grant was obtained fraudulently by making a false statement or concealment of something material to the case.*
- 3. That the grant was obtained by means of untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.*
- 4. That the applicants were never informed about the proceeding to substitute the original administrator and to rectify the grant.*
- 5. That the distribution of the estate is against the wishes of the deceased.*
- 6. That the rectified grant has disinherited some beneficiaries and failed to give provision for some deceased beneficiaries.*

In the supporting affidavit of Ephantus Nyaga Mwaniki it was deponed that the original certificate of confirmation of grant issued to the original administrators was obtained fraudulently and violated the wishes of the deceased. The subsequent rectified letters of administration and certificate of confirmation were also obtained fraudulently in that the other beneficiaries were not informed of the proceedings.

The applicants argue that the mode of distribution adopted by the respondent violated the wish of the deceased in that the share of one Alice Gichugu, (now deceased) was not accounted for in the new grant. The respondent has a share in parcel No. NGANDORI/KIRIGI/1599 contrary to the wishes of the deceased who wanted her to get a share in NGANDORI/KIRIGI/146. As a result the respondent has enriched herself to the disadvantage of other beneficiaries.

The evidence of the 1st applicant was that the 2nd applicant is his nephew being a son of his elder brother while the original petitioner, (Samson Ndwiga Plasto) is his step-brother . He stated that he wished to adopt the entire evidence of the 2nd applicant.

The 2nd applicant testified that the original petitioner is his uncle and the late Ethan Njiru is his father. The deceased in this case Blasto Mwaniki Alias Plasto Kangavio was his grandfather. The first grant was issued to Alice Gichugu and Ethan Njiru who are now deceased. The current petitioner/respondent wrongly took one acre from parcel No. NGANDORI/KIRIGI/1599. The deceased had already distributed parcel No. 1599 before he died. One Njagi Mwaniki Plasto, John Ndwiga, Jese Mwaniki and Alice Gichugu were each to get  $1\frac{1}{4}$  acre.

The 2nd applicant further testified that Samson Ndwiga was supposed to get KAGAARI/WERU/146 and not the land allocated to his mother Alice Gichugu. After the death of the first administrator Alice Gichugu, Samson Ndwiga was appointed administrator. He proceeded to obtain another grant dated 7/3/2006 and did not inform the other beneficiaries the mode of distribution. The grant was confirmed in which Samson Ndwiga got 2 acres and a further  $1\frac{1}{2}$  acres which had been allocated to the 2nd applicant's grandmother.

The deceased had 3 wives. The first wife Esther had 2 children namely Plasto Njagi and John Ndwiga. The 2nd wife Alice Gichugu had no children. The 3rd wife Harriet Wanjiru was the mother of the petitioner Samson Ndwiga Njuki. The deceased had given the 1st applicant 1 acre of land. Esther Njiru Plasto and Ephantus had land given to them by the clan. Harriet wanjiru and her children were to get KAGAARI/WERU/146. Esther children were also to remain in KAGAARI/WERU/146. The 2nd applicant testified that the petitioner should therefore go to KAGAARI/WERU/146 while the other three should go to NGANDORI/KIRIGI/1599. The portion allocated to Alice Gichugu should be shared while the portion of John Ndwiga should be given to his wife Mary Njeri.

The 2nd applicant called one witness Johnson Nyaga (DW3) who testified that he knew the deceased and his family for many years. He is aware of how the deceased distributed his land to his members of his family. Irene requested to be given KAGAARI/WERU/146 together with her children which request the deceased granted. Esther was given NGANDORI/KIRIGI/1599. DW3 told the court that on the request of the deceased he was present during the sharing out of the land. John Ndwiga and Mwaniki Wangorio were also present. The deceased also shared out NGANDORI/KIRIGI/1599 to John Ndwiga Plasto and Mwaniki. The other land was registered between the deceased and Mwaniki.

The case of the petitioner Ndwiga Plasto Samson was that his mother Alice Gichugu filed this succession cause. Ephantus and Ethan who are his elder brother filed an objection which resulted in the grant being given jointly to Alice Gichugu and Ethan Njiru. The grant was thereafter confirmed. The joint administrators later died and a fresh grant was given to him and was later confirmed. He denies that there was any fraud or concealment of any material fact relevant to the case on his part. He kept updating all the beneficiaries about the process of obtaining the grant and its confirmation.

He stated that Alice Gichugu had no child of her own and that the 1st applicant is the eldest surviving son of the deceased. In the original grant Alice was given 1 acre. In the new distribution, the portion of Alice was given to him (the petitioner) with the consent of all the beneficiaries. The two applicants and one Mary Njeri have always disagreed with the other beneficiaries.

The estate of the deceased comprises of two parcels of land. NGANDORI/KIRIGI/1599 which was divided into 4 portions which were allocated to Jese, Mary Njeri, Njagi Plasto, Alice and the petitioner each getting one acre. KAGAARI/WERU/146 was allocated to Samson Ndwiga Plasto. She denies that he was allocated in KAGAARI/WERU/146. It was her evidence that the deceased died intestate.

The petitioner called one witness Richard Karanja (DW2) who testified that he knew the deceased and his family well. He told the court that Ndwiga Plasto was given land at Kirigi which was divided into 4 portions by Plasto. One Kithinji removed the boundary marks. According to him Jese Mwaniki, Ndwiga Plasto, Njagi Plasto and Alice Gichugu were given 1 acre each. He said that Ndwiga.. was not to get any land from Kirigi. Samson Ndwiga destroyed the boundaries because he had not been given any land in Kirigi. Samson had been given land parcel No. KAGAARI/WERU/146 and that is where he should go. The petitioner (Samson) did not inform the family the mode of distribution and that is why they are seeking to revoke the grant. Samson also gave himself a share which belonged to Gichugu.

The law applicable in this case is Section 76 of the Law of Succession Act. It provides:-

*A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—*

*(a) that the proceedings to obtain the grant were defective in substance;*

*(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;*

*(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;*

*(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—*

*(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or*

*(ii) to proceed diligently with the administration of the estate; or*

*(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or*

*(e) that the grant has become useless and inoperative through subsequent circumstances.*

The facts leading to this summons for revocation of grant have a long history which can be briefly stated. The current administrator Esther Wambeti Ndwiga was substituted in place of her deceased husband Samson

Ndwiga Blasto in the estates of Blasto Mwaniki and Samson Ndwiga Blasto. The late Samson Ndwiga Blasto was a beneficiary to the estate of his father Blasto Mwaniki Alias Blasto Kangovio. Samson had taken over the administration of the estate from his step mother one Alice Gichugu.

The deceased had three wives namely Esther, Alice Gichugu and Irene Wanjiru. Esther and Irene had children while Alice had none. The deceased's estate consisted of two parcels of land. Ngandori/Kirigi/1599 and Kagaari/Weru/146.

Since the case was filed several beneficiaries have passed on leaving their children and grandchildren behind. The applicants herein Ephantus Nyaga Mwaniki and Jessee Mwaniki Njiru are grandchildren of the deceased while the current petitioner is a daughter in law (wife to Samson).

The late Samson Ndwiga had testified in this case before he died. He said that he sold one acre from the deceased's estate to meet the expenses in the succession cause. This one acre seems to be the bone of contention in this summons for revocation. The portion was hived out of LR. NGANDORI/KRIGI/1599 and had originally been marked out as the share to be inherited by the late Alice Gichugu, widow of the deceased who was childless.

The applicants contend that Samson Ndwiga kept them in the dark as far as the administration of the estate was concerned. This was denied by the petitioner who said that he kept all the beneficiaries informed of all that he did. He said that the one acre he sold was meant to cover expenses of the succession cause. The applicants also alleged that the petitioner took over administration of the deceased's estate from the original petitioner without informing them. He is also accused of concealing the matters material to case. These allegations are denied by the petitioner who said he kept all the beneficiaries informed. He said one acre he sold was with the consent of all the beneficiaries.

The confirmed grant shows the distribution as follows:-

NGANDORI/KIRIGI/1599

- (a) Mary Njeri - 1 acre
- (b) Jessee mwaniki - 1 acre
- (c) Njagi Blasto - 2 acre
- (d) Samson Ndwiga - 2 acres

KAGAARI/WERU/146

- (a) Dickson Njuki Blasto - 1 acre
- (b) Francis Wachira - 1 acre
- (c) Dickson Njuki Blasto - 1.2 acres

Francis Wachira

With the foregoing arrangement, the petitioner argued that all the beneficiaries in the estate were provided for. Looking at the mode of distribution, I find that all beneficiaries have been given more or less similar sizes of the two parcels which make the estate of the deceased. The first applicant Ephantus Nyaga Mwaniki inherits his deceased father's land which was given by the clan. Both applicants are grandchildren of the deceased who come after the petitioner in priority under the law of succession.

Although the parties did not explain, it appears that the two acres going to the petitioner include the one acre which was sold to meet the expenses of this case.

The applicants have not established that the petitioner failed to disclose any facts material to the case. The deceased in this case died intestate. The applicants have not satisfied that court that he had expressed any wishes on succession which justify disturbing this succession process. Taking into consideration that all the beneficiaries have been provided for; that the applicants rank behind the petitioner in priority; that the applicants have failed to prove that the petitioner acted fraudulently or failed to disclose any fact material to the case, I am of the considered opinion that this summons has no merit. No justification has been shown to revoke/ annul the grant.

I dismiss the summons and order that each party meets their own costs.

The current administrator Esther Wambeti Ndwiga should take lead and have the pending issues in this cause finalized.

It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 17TH DAY OF JUNE, 2015.**

**F. MUCHEMI**

**JUDGE**

**In the presence of:-**

**Mr. Mwaniki for Mugambi Njeru for Petitioner**

**Ms. Kiragu for K. Githinji for Protestor**