



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 839 OF 2014**

**IN THE MATTER OF THE ESTATE OF MURA KIMANI ALIAS MUURA KIMANI  
(DECEASED)**

**DAVID KIMANI MURA .....APPLICANT**

**VERSUS**

**MICHAEL MUIGAI MURA .....RESPONDENT**

**RULING**

1. For determination is a Summons for Revocation of Grant dated 7<sup>th</sup> April 2014. The application seeks revocation or annulment of the grant of letters of administration intestate made to the respondent and confirmed on the 31<sup>st</sup> October 2013 in Thika CMCS No. 230 of 1989, a declaration that applicant is entitled to have an equal share in estate of Mura Kimani and for variation or setting aside of the order made on 17<sup>th</sup> October 2013.
2. The application is premised on the grounds set out on the face of the application and on the facts deposed in the affidavit of the applicant, David Kimani Mura, sworn on 7<sup>th</sup> April 2014.
3. The general ground is that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant. The specific grounds are that the respondent to whom the grant was made has failed, after due notice and without reasonable cause, to proceed diligently with the administration of the estate, that the respondent has never met with applicant to discuss and agree on the mode of distribution of the estate of the deceased and failed to ensure that the applicant, as a beneficiary who has been in possession for over 40 years and is living on a portion of the property, is not displaced in the distribution, and that due to the lack of discussion on the mode of distribution the applicant was denied equal shares in the estate of deceased.
4. In the affidavit in support, it is averred that the deceased died on 18<sup>th</sup> September 1984, and a representation to the estate was sought in Thika CMCS No. 230 of 1989, a grant of probate was made and confirmed on the 31<sup>st</sup> October 2013 to the respondent herein. He avers that the assets – being Kakuzi/Kirimiri/Block 7/47, Loc. 1/Mugumoini/365, Loc. 1/Mugumoini/10A, 4 Shares in Kandere Muhethu, 19 Shares in Makenagira Farmers Co. Ltd, and 10 shares in Kihui Mwiri Farmers Co. Ltd – listed as making the estate belonged to the deceased.
5. It is his contention that the respondent has not adequately distributed the property. He avers that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, taking the form of his omission as beneficiary although he had lived with the deceased

as a child. He contends that the respondent and other beneficiaries have excluded him from any discussions regarding the estate and are taking steps to sell part of the assets arbitrarily and without consultation. He asserts that he lived with the deceased all his life and the deceased treated and considered him as his child, hence his entitlement to an equal share of the estate.

6. The respondent has opposed the application. He has sworn an affidavit in reply. It is his case that the applicant was a party to the succession suit which was filed at the lower court. He had raised an objection to the mode of distribution; the lower court determined the matter on 15<sup>th</sup> July 1993. He states that the applicant did not appeal against the decision made in that ruling.
7. The respondent further avers that the applicant's allegations are untrue and unjustified. He contends that the applicant has not justified why he would be entitled to the shares set out in paragraph 8 of his affidavit in support instead of what was awarded to him by the court after it had considered the evidence adduced before it before it rendered its decision. The respondent further contends that the allegation that he is selling estate property to third parties is not backed by any evidence. He, therefore, submits that the applicant's application is frivolous, and vexatious and an abuse of the court process, calculated to delay the distribution of the estate to the rightful beneficiaries. He prays that the application be dismissed.
8. The grounds upon which a court may revoke a grant are statutorily provided for in Section 76 of the Law of Succession Act. The provision states as follows -

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

- a. *That the proceedings to obtain the grant were defective in substance;*
- b. *That the grant was obtained by the making of a false statement or by concealment of from the court of something material to the case.*
- c. *That the grant was made by an untrue allegation of fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.*
- d. *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 a year from the date thereof or such longer period as the court has ordered or allowed; 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 paragraph (e) and (g) of section 83 or has produced such investigation or account which is false in any material particular; or*

- e. *That the grant has become useless and inoperative through subsequent circumstances.'*
9. The applicant's case is that the grant herein 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 inadvertently by the respondent, being that the applicant was omitted as a beneficiary and yet he lived with the deceased as a child. A perusal of the certificate of confirmation of the grant reveals that the applicant was given a share of 1 acre of Loc. 1/Mugumoini/365 property. The applicant does not explain the basis upon which he got the said shares, or how he was omitted from distribution, yet the record shows that he was given one acre out of the said property. I agree with the respondent's submission that the applicant has not justified why he should be entitled to the shares he has listed at paragraph 8 of his affidavit. He has not established why he should be given more than the one acre he got.

10. I have scrupulously studied the record before me, and I am not satisfied that the applicant has

established the untrue allegation of fact essential in point of law upon which the said grant was obtained. All there is on record is a plain allegation without any proof being provided. His other contention is that the respondent has failed, after due notice and without reasonable cause, to proceed diligently with the administration of the estate, however, he has not established how the respondent has failed to diligently administer the estate.

11. One remarkable thing about this matter is that at the lower court the applicant litigated as Kimani Wanjiru alias Kimani Mura. It is under that name that he was awarded the one acre on 15<sup>th</sup> July 1993 by S. M. Mutuku Ag. RM and the certificate of confirmation of grant issued. I note that he swore an affidavit on 7<sup>th</sup> April 2014, filed herein on the same day, stating that the names David Kimani Wanjiru and David Kimani Mura refer to him.

12. In view of everything that I have stated above, I have come to the conclusion that the application dated 7<sup>th</sup> April 2014 is wholly without merit and I do hereby dismiss the same with costs. The court file in respect of Thika CMCSC No. 23 of 1989 shall be returned to the Thika Chief Magistrate's Court for final disposal.

**DATED, SIGNED and DELIVERED at NAIROBI this 25<sup>TH</sup> DAY OF SEPTEMBER, 2015.**

**W. MUSYOKA**

**JUDGE**

In the presence of Mr. Omari advocate for the Applicant.

In the presence of Miss Agamba for Mr. Macharia advocate for the Respondent.