



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 1443 OF 2014**  
**IN THE MATTER OF THE ESTATE OF JAMES NGIGI MBUGUA (DECEASED)**  
**MARGARET WAMBUI NGIGI.....APPLICANT**  
**VERSUS**  
**VERONICAH GATHONI NGIGI.....1<sup>ST</sup> RESPONDENT**  
**JOHN MBUGUA NGIGI.....2<sup>ND</sup> RESPONDENT**

**JUDGEMENT**

1. The deceased James Ngigi Mbugua died intestate on 25/1/2003. His widow Veronica Gathoni Ngigi (1<sup>st</sup> respondent) and son John Mbugua Ngigi (2<sup>nd</sup> respondent) petitioned for the grant of letters of administration intestate in Kiambu Chief Magistrate's Court Succession Cause No. 49 of 2003. The estate of the deceased was said to comprise L.R Gatamaiyu/Nyanduma/T.406, L.R Gatamaiyu/Nyanduma/T.333, Plot No.12- Kagwe Market and Gilgil/Gilgil Block 1/447. The grant was issued on 2/7/03 and confirmed on 31/3/04 in which all the property went to the 1<sup>st</sup> respondent.

2. The applicant Margaret Wambui Ngigi filed this application dated 26/5/14 seeking to have the grant revoked on the basis that she was a child of the deceased who had not been informed of the succession cause, had not been named as one of the beneficiaries and had not been provided for in the distribution. Her case was that the deceased had another family comprising her late mother Anne Wanjiru and herself, and that he had settled them on Gilgil/Gilgil Block 1/447, the other family having been settled at Kagwe. This information, she stated, was known to the respondents who had not involved her in the matter. The applicant's mother had died on 13/10/05. She stated that she was a minor at the time the case was going on at Kiambu and was not made aware; that it was only subsequently that a neighbour called her to say that their land at Gilgil was being subdivided by unknown people. She checked to find the case had been heard and grant confirmed.

3. The 1<sup>st</sup> respondent's case was that she was the statutory wife of the deceased who had left no other beneficiaries. She had seven (7) children with the deceased. They included the 2<sup>nd</sup> respondent. She had named all of them as beneficiaries in the affidavit sworn to support the petition and application to confirm the grant.

4. The applicant had provided a photograph of the family of the deceased taken during his burial, and it

showed both families. In the replying affidavit sworn by the 1<sup>st</sup> respondent on 12/6/14 she stated:

**“ 7. THAT though the applicant and her late mother were photographed together with other members of the family at the burial of my late husband, the same does not entitle them to be lawful beneficiaries to the estate herein.”**

She (the 1<sup>st</sup> respondent) swore another replying affidavit on 23/7/15 which was filed on 27/7/15 and in which she stated as follows:

**“ 4. THAT I have been advised by my advocates on record which advise I verily believe that MARGARET WAMBUI NGIGI is a lawful beneficiary to the estate and should be included in the distribution herein.”**

5.....

6.....

7.....

**8. THAT I have been advised by my Advocates on record which advise I verily believe that since I have seven (7) children the total units of inheritance to this estate equals nine(9) and as such the applicant’s lawful share to the Gilgil land is 1/9 which is equivalent to 0.56 Acres or thereabout.”**

5. There is no dispute that the 1<sup>st</sup> respondent has since subdivided Gilgil/Gilgil Block 1/447 into several parcels which are Gilgil/Gilgil Block 1/11223,11224,11225,11226,11227,11228,11229,11230 and 11231.

6. Counsel filed written submissions which I have considered.

7. A grant is liable for revocation where the person who obtained it concealed material information from the court and excluded some of the survivors of the deceased (**IN THE ESTATE OF EZEKIEL MULANDA MASAI, ELDORET HC Probate & Administartion Cause No.4 of 1992**). The respondents did not disclose that the applicant was a daughter of the deceased and a beneficiary of his estate. I revoke the grant that was issued to the respondents and which was confirmed on 31/3/04.

8. It would appear that the 1<sup>st</sup> respondent has sold two acres of the 5 acres that comprised Gilgil/Gilgil Block 1/447. The applicant asked for the remaining three acres, but the 1<sup>st</sup> respondent stated that the parcel was more valuable when compared to the other parcels that the deceased left. I direct that the applicant and the 1<sup>st</sup> respondent do agree on a valuer to value all the parcels and plots left by the deceased and the valuation report(s) filed within 30 days to enable decision on distribution. The 1<sup>st</sup> respondent shall file the original sale agreement for the two acres. This should be done within 30 days. In the meantime, there shall be a fresh grant issued in the joint names of the applicant and the 1<sup>st</sup> respondent. The parties, or either of them, shall apply for the confirmation of the grant within 30 days from today. There shall be an order to preserve the estate of the deceased until the matter is heard and determined. I make no order as to costs as this is a family dispute.

**DATED and DELIVERED at NAIROBI this 11<sup>th</sup> December 2015.**

**A.O. MUCHELULE**

**JUDGE**

