



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
SUCCESSION CAUSE NO. 509 OF 2002
IN THE MATTER OF THE ESTATE OF
JOEL MWAURA WAWERU (DECEASED)

BETWEEN

JOHN MAINA MWAURA

ANN WAIRIMU MWAURA APPLICANTS

AND

VERONICAH MUTAVE MWAURA

DELOMON MWANGI MWAURA PETITIONERS/RESPONDENTS

RULING

1. This matter before the court is an application for revocation of grant dated 11th March 2009 in which the applicants seek to revoke and or amend the grant of letters of administration dated 10th March 2006.
2. The deceased, Joel Mwaura Waweru, died on 23rd October 1991. According to the petition filed in the matter, the deceased in his lifetime, he had three wives and nineteen children. He only left behind three properties; Gaturi/Weru/778 comprising 7 ½ acres and two plots number 1708 and 1780 measuring 25 x 50.
3. At the confirmation of the grant, the properties were divided as follows:
 1. *Gaturi/Weru/778 – Veronica Mutave Mwaura,*
 2. *3 ½ acres, Delomon Mwangi Mwaura – 3 acres,*
 3. *Ann Wairimu Mwaura – 1 acre*
 4. *Land parcel number 1708 25 x 100 side B to go to Veronica Mutave Mwaura*
 5. *Land parcel No. 1708 25 x 100 side A to go to Delomon Mwangi Mwaura.*
4. The applicants seek to annul and revoke the grant on the grounds that they were not consulted or told about filing the case and that they are sons and daughters of the deceased. They claim that they were omitted from the petition and they pray that the application be allowed.
5. **Section 76** of the *Law of Succession Act (Chapter 160 of the Laws of Kenya)* relied upon by the applicants provides 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 die 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.*
6. I have considered the depositions both in support and in opposition to the summons for revocation in light of the documents supporting the petition and I am satisfied that the applicants have not established any grounds for revocation. The deceased's three houses were involved in the application and the applicants were listed as beneficiaries of the estate. The applicants' mother was in fact an administrator of the estate before she passed away. The application does not set out the names of any beneficiaries whose name has been omitted.
7. It is apparent that the dispute concerns the distribution of the estate and parties have been given a chance to resolve the matter. As I understand, the administrators admit that they are mere trustees for the entire family and will subdivide the property in due course as evidenced by the pending application by one of the administrators to permit the registrar of this court to execute the necessary documents.
8. In the circumstances, the summons for revocation of grant is dismissed.

DATED, SIGNED and DELIVERED at EMBU this 30th day of April 2014

D.S. MAJANJA

JUDGE