



**REPUBLIC OF KENYA**

**IN THE HIGH OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 1201 OF 2005**

**IN THE MATTER OF THE ESTATE OF KANYO NJUKI (DECEASED)**

**AND THIKA CHIEF MAGISTRATE'S SUCCESSION CAUSE NO. 429 OF 2003 – ESTATE OF KANYO NJUKI – (DECEASED)**

**JUDGMENT**

1. The application before court is a summons for annulment of grant dated 11<sup>th</sup> May 2005 and taken out under Sections 2(2), 29, 35 and 76 of the Law of Succession Act and Rules 44, 63, 64 and 65 of the Probate and Administration Rules and Section 128 of the Registered Land Act.
2. The Applicant seeks in the main orders that the grant made in Thika Chief Magistrate's **Succession Cause No. 429 of 2003** – Estate of Kanyo Njuki – (Deceased) to Esther Njeri Mwaura on the 4<sup>th</sup> March, 2004 and confirmed on the 21<sup>st</sup> April, 2004 be annulled because the proceedings to obtain the grant were defective in substance.
3. The application is supported by the annexed affidavit of Francis Kinyanjui Kanyo, who avers that the consent contemplated by Rule 26 (2) of the Probate and Administration Rules was not filed in accordance with the requirements of the law, and that the petitioner, Esther Njeri Mwaura, fraudulently and deceitfully stated that she was the widow to the late Kanyo Njuki, a statement that she knew was untrue. He further avers that being a married woman, the petitioner lacked the right to petition for the grant while her mother, Ruth Wambui Kanyo, who is the widow of the deceased was still alive, and that the petitioner lacked the right to petition for grant when he, a son of the deceased, was still alive. It is stated that the estate of the deceased was distributed against the clear requirements of the grant and also against the clear requirements of the law. He avers that the Petitioner has manipulated the grant and subjected it to abuse and caused that property known as Chania/Matara/844 to be sub-divided and new titles issued.
4. The Applicant contends that he has been completely disinherited by his mother and married sisters as appears from the letter dated 27<sup>th</sup> November 2003 issued by the Chief, - Gituamba Location. He says that he is aware that the land register had already been altered following the sub-division of Chania/Matara/844 and by reason of complicity between the land registrar and the petitioner, he is unable to furnish the court with certified copies of the register in respect of Chania/Matara 2504 – 2511. He asserts that the administration and distribution of the estate of his late father has been effected in a manner that defeats the letter and spirit of the law for the persons now taking benefit of the estate were never dependants of the deceased.
5. Opposing the application, Ruth Wambui Kanyo, swore and filed a replying affidavit. The deponent deposes in that affidavit that the applicant's assertion that Esther Njeri Mwaura alleged to be the widow of the deceased is untrue and defamatory. She says that the applicant totally

declined to come to court and get his share of 10 acres which is Chania/Matara 2510 and that the court could not drag him to appear and that the said acres were registered in her name. She avers that she holds a personal parcel of one and half acres which is Chania/Matara 2511, and that she would wish to transfer the said 10 acres to the applicant with immediate effect. It is her averment that her daughters hold little pieces of up to 3 acres. She further says that the applicant is being unreasonable, vindictive and utterly obstinate. She avers that the said daughters are dependants being children of the deceased.

6. Esther Njeri Mwaura swore a further replying affidavit on 19<sup>th</sup> September, 2007 where she avers that she petitioned for letters of administration intestate in respect to the estate of the deceased in her capacity as a daughter of the deceased and a beneficiary of the estate in issue. She states that no objection was raised to her petition by the applicant or by any other party. She contends that when she appeared together with other beneficiaries in court on 21<sup>st</sup> April, 2004, the court confirmed the grant of letters of administration and the mode of distribution of the estate. She states that it is clear from the said certificate of confirmation of grant that the applicant herein was allocated 10 acres of land from Chania/Matara/844 out of a total acreage of 22 acres, which parcel of land is presently occupied by the said applicant. She contends that the applicant was not disinherited as contended in the present summons and the same has been brought to deprive the rest of the beneficiaries of their rightful entitlement from the estate. She avers that the only reason she took out the letters of administration instead of her mother is because her mother is very old (approximately 90 years) and was unable to undertake such processes as are attendant to an application for and execution of letters of administration.
7. This court has carefully considered the application, the affidavits on records and the rival submissions. The law gives this court wide discretion to revoke or annul a grant issued by this court, whether the said grant has been confirmed or not. Under Section 76 of the Law of Succession Act, it is specifically provided as follows:-

‘76.A grant of presentation, 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 has ordered or allowed; or
    1. (ii) to proceed diligently with the administration of the estate; or
    2. (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
  5. The grant has become useless and inoperative through subsequent circumstances.’
8. I have noted that the applicant herein has cited fraud and false statements. He has also contended that the consent contemplated by Rule 26 (2) of the Probate and Administration Rules was not filed in accordance with the requirements of the law. He also relies on the ground of untrue allegations. His contention is that the petitioner, Esther Njeri Mwaura, in her petition for grant of letters of administration stated that she was the widow to the late Kanyo Njuki, and yet she was a daughter to the deceased, and being a married woman, she lacked the right to petition for grant when the applicant, being a son to the deceased, was still alive.

9. I have noted that the applicant raised no objection to the petitioner's application for grant of letters of administration intestate and the said petitioner has said as much in her further replying affidavit sworn on 19<sup>th</sup> September, 2007 at paragraph 4. Also, it is the petitioner's contention that the applicant expressly consented to the grant of letters of administration to her; this contention has not been controverted by the applicant herein. Beyond that, a perusal of the certificate of confirmation of a grant dated 21<sup>st</sup> April 2004 reveals that the applicant's share is 10 acres on his behalf and on behalf of his mother Ruth Wambui Kanyo. It therefore follows that the Applicant's allegations of being disinherited has no merit.
10. This is an old matter, the deceased whose estate this matter relates died in 1977, and the application herein was filed in 2005. It would be important if this matter is finally concluded. The applicant in my view has not met the conditions that would justify the annulment or revocation of the confirmed grant or to change the mode of distribution approved by the court. It is therefore the considered view of this court that the applicant has failed to make up a case for the orders sought.
11. In view of the above, this court finds that the application is not merited and is consequently dismissed.

**DATED, SIGNED and DELIVERED at NAIROBI this 26<sup>th</sup> DAY OF September, 2014.**

**W. MUSYOKA**

**JUDGE**