



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MILIMANI**  
**SUCCESSION CAUSE NO. 286 OF 2012**

**IN THE MATTER OF THE ESTATE OF MUSA KINYANJUI KURIA- (DECEASED)**

**RULING**

Musa Kuria Kinyanjui died on 20th June 1983. Representation to his estate was obtained on 7th October 1990 by his wife, Wairimu Kinyanjui, in Kiambu Chief Magistrate's court succession cause no. 88 of 1994. In the petition lodged in court on 4th February 1994 he was said to have died possessed of a property described as Kiganjo/Handege/234, in common proprietorship with Kariuki Maina on the basis of 5/7 and 2/7, respectively.

Thereafter the administrator moved the court on 3rd October 1995, by an application dated 15th September 1995, seeking confirmation of the grant made to her on 7th October 1990. In her affidavit in support of the confirmation application, she stated that the only property the deceased owned was Kiganjo/Handege/234, and thereafter proposed how the said property was to be distributed. It was also discussed in the said affidavit that the deceased's share in Kiganjo/Handege/234 was 5/7 of the parcel of land. The grant was confirmed on 4th December 1995 and a certificate of confirmation issued on 20th February 1996. The certificate was subsequently amended on 11th November 1998.

Kariuki Maina, the co-owner of Kiganjo/Handege/234, has moved this court by his application dated 10th February 2012, asking the court to revoke the amended certificate of confirmation of grant amended on 11th November 1998. His argument is that in the application for confirmation of grant it was not disclosed that he was part-owner of Kiganjo/Handege/234 and the property, that is to say Kiganjo/Handege/234 was distributed as if it was owned wholly by the deceased, Musa Kinyanjui Kuria. He pleads that this had led to loss of his 2/7 share in the said estate. To support his case, he has attended to his affidavit in support of his application letters from the Ministry of Lands confirming that the administrator of the estate of Musa Kinyanjui Kuria had shared out the said property as if the same belonged to the deceased.

The administrator of the estate of the deceased, as well as the beneficiaries, were served with application, and there is an affidavit of service on record. The administrator and the other survivors of the deceased did not respond to the said application. It is therefore unopposed.

The application is founded on **Section 76** of the Law of Succession Act, which provides for revocation of grants, whether or not confirmed. This provision does not provide for revocation of certificates of confirmation of grant. The certificate of confirmation is not a grant. The grant is the certificate which appoints the administrator and this is what ought to be revoked through **Section 76** of the Law of Succession Act. The certificate issued following confirmation of the grant under **Section 71** of the Law

of Succession Act is not a new or fresh grant, but rather a document certifying that the grant had been confirmed. Consequently, the certificate is not for revoking under **Section 76** of the Law of Succession Act.

There would be no basis for revoking the grant in this case as at the time the applicant applied for letters, it was disclosed that Kiganjo/Handege/234 was co-owned by the applicant and the deceased. There was no concealment of matter from the court nor was fraud practiced to obtain the grant. The grant made to Wairimu Kinyanjui was therefore properly obtained.

Ideally, the applicant's remedy lay in a civil suit filed at the civil court, where he should have sued the estate for declarations that he was a co-owner of Kiganjo/Handege/234. Thereafter, he should have proceeded to lodge the said declaration with the Lands Office. He is not a survivor of the deceased and he has, therefore, no interest in the estate sufficient to sustain him an intervention by him in the probate process. Part of the reason that the Probate and Administration Registry at the High Court at Nairobi is clogged with matters is that it is entertaining litigation that ought to be handled elsewhere.

Be that as it may, this court will deal with this matter under Rule 73 of the Probate and Administration Rules. The court makes the following orders:-

- (1) That it is hereby declared that Kariuki Maina owns 2/7 of Kiganjo/Handege/234;
- (2) That the administrator of the estate of Musa Kinyanjui Kuria ought not have shared out the whole of Kiganjo/Handege/234 as if it was fully owned by the deceased.
- (3) That the orders made on 4th December 1995 confirming the grant in Kiambu Chief Magistrate's Court Succession Cause No. 88 of 1994 are hereby vacated and the certificate of confirmation of grant issued on 20th February 1996, and amended on 11<sup>th</sup> November 1998, is hereby cancelled.
- (4) That the court file in respect of Kiambu Chief Magistrate's Court Succession Cause No. 88 of 1994 shall be returned to the Kiambu court for the distribution of the 5/7 share of the deceased in Kiganjo/Handege/234.
- (5) That costs of this application are awarded to the applicant.

**DATED, SIGNED and DELIVERED at NAIROBI this 16<sup>th</sup> DAY OF May, 2013.**

**W. Musyoka**

**Judge**