



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 1170 OF 2010

IN THE MATTER OF THE ESTATE OF THINDIU MATHENGE GITHAMBO – (DECEASED)

TERESA WANJIRU THINDIU APPLICANT

VERSUS

PETER MATHENGE1ST RESPONDENT

MARGARET NJERI MAINA2ND RESPONDENT

MARY NYAMBURA MATHENGE3RD RESPONDENT

CATHERINE NYAMBURA MATHENGE ...4TH RESPONDENT

ALOISIUS WERU MATHENGE5TH RESPONDENT

ROSE MUTHONI KIMENYI6TH RESPONDENT

RULING

The summons for revocation of grant dated 30.12.2011 taken out by **Teresa Wanjiru Thindiu**, the Applicant herein, seeks to have the grant given to them on 19th December, 2011, revoked. The summons is supported by the affidavit of the applicant. She deponed in her affidavit that she requested **Peter Mathenge Thindiu**, the 1st Respondent, to assist her to process these succession proceedings since he was familiar with court procedures and that she trusted that he will not go behind her back. The Applicant further averred that she instructed the 1st Respondent to distribute the parcel of land known as **L.R. NO. Aguthi/Gatitu/1087** as follows:

1. **Mary Nyabmura Mathenge** - 2 ½ acres
2. **Catherine Nyambura Mathenge** - ¼ acres
3. **Aloisius Weru Mathenge** - 3 ¼ acres
4. **Stephen Maina Thindiu** - 3 ¼ acres

The applicant stated that she expressly told the 1st Respondent that she was not interested to have a share of the deceased's Estate since she was entitled to a life interest. She further avers that the 1st Respondent misled her together with the other beneficiaries to sign papers consenting to the confirmation of grant believing the 1st Respondent followed her instructions. The Applicant says she was surprised to later learn that she was given 1 ¼ acres of land to be excised from **L.R.NO. Aguthi/Gatitu/1087**. The Applicant pointed out that the aforesaid share was given to her through the trickery of the 1st Respondent

hence the grant should be revoked.

Peter Mathenge Thindiu, the 1st Respondent herein swore a replying affidavit which he filed to oppose the summons. He denied misleading his mother, the Applicant herein. He claimed his mother was not tricked but conscientiously signed the consent forms. The 1st Respondent stated that the deceased had shared out his land inter vivos with intent to transfer to the beneficiaries in the manner he proposed.

Having considered the rival averments and the submissions placed before this court, it is clear that the 1st Respondent does not deny that the Applicant had given him express instructions not to include her as a beneficiary to the Estate of the deceased. In my view, I am convinced that the 1st Respondent breached the trust bestowed upon him by his mother and proceeded to prepare a false schedule of distribution. That schedule of distribution went against the wishes of the actual administratrix of the deceased 's Estate. That was a serious transgression which entitles this court to revoke the grant on the ground that certain facts were presented to mislead the court. I am satisfied that the summons for revocation of grant dated 30.12.2011 is well founded. It is allowed as prayed.

Dated, signed and delivered this 23rd day of August, 2013

J.K. SERGON

JUDGE

In open court in the presence of Miss Kahinga for Applicant

Kingori for Respondent