

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO.236 OF 1994

IN THE MATTER OF THE ESTATE OF PETRO KARIUKI WACHIRA (DECEASED)

RUTH WANJIKU.....APPLICANT

VERSUS

MARGARET WANJIRU KARIUKI.....RESPONDENT

RULING

The deceased, **Petro Kariuki Wachira** died on 3rd April, 1994 at the age of 76 years and was survived by three widows and children.

On 16th September, 1994 one of his sons, **Lawrence Kagai** filed a petition in Nbi.H.C.SUCC.C.NO.892 of 1994 for grant of probate of written will in which he was named as the executor. Earlier on 21st June, 12994, one of the widows of the deceased, **Margaret Wanjiru** had filed Nakuru H.C.Succ. Cause No.236 of 1994 brought as intestate cause.

Another widow **Ruth Wanjiku** has now brought the present application in the Nakuru cause seeking among other reliefs that the grant issued to **Margaret Wanjiru** be revoked and/or annulled on the grounds that it was obtained by fraudulent means by making a false statement and concealment of material facts; that the deceased died testate and not intestate as presented by the respondent; that the respondent has not disclosed the full inventory of the estate and the dependants of the deceased.

The respondent has denied the foregoing and has deposed that the application is full of falsehood; that the will is a forgery; that she did not know of the existence of any will; that the respondent only applied for a grant in respect of the property occupied by her.

Counsel for the parties submitted on the foregoing points. It is clear from the record and arguments that there are two grants of representation in respect of the estate of the deceased, one obtained with written will annexed and another as an intestate. The instant application for revocation is on the grounds that the respondent obtained her grant by making a false statement. The respondent on her part has maintained that she was not aware of the existence of the will which in her opinion is a forgery. She also has averred that she only petitioned for the property she occupies.

It is apparent that the respondent was aware that other than the property listed in her petition, the deceased had also other assets which she omitted. Secondly, whereas she acknowledged that the deceased had other dependants, she did not name them in the petition.

Regarding the will, the respondent has not specified why she thinks the same is a forgery. Choosing between the respondent's grant and the allegedly forged will, justice will be served by revoking the grant issued to the respondent on 19th September, 1995 as it does not include all the properties and the dependants of the deceased. The will, *prima facie*, makes provision to all the dependants including the respondent. Let its authenticity be tested if the respondent insists.

For the reasons stated, this application succeeds and the grant issued on 19th September, 1995 is hereby revoked.

I make no orders as to costs.

Dated, Signed and Delivered at Nakuru this 24th day of February, 2012.

**W. OUKO
JUDGE**