



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**Succession Cause 127 of 1994**

**IN THE MATTER OF THE ESTATE OF PHYLIS WAIRIMU NDUNG\U alias WAIRIMU w/o NDUNG\U**

**ELIJAH GATU NDUNG\U.....APPLICANT**

**-versus-**

**LYDIA NJOKI GATU.....RESPONDENT**

**R U L I N G**

The subject matter of this ruling is the Summons for Revocation and Annulment of Grant dated 11th July 2003, in which Elijah Gatu, the Applicant prays for the Grant of Letters of Administration given to Lydia Njoki Gatu to be revoked. The summons is supported by the affidavit of the Applicant. It is important to note that the Respondent did not file any reply to the summons but she merely relied on her affidavits and those of Rosemary Wambura and Beatrice Muchugu Muita to oppose the summons.

When the summons came up for inter partes hearing, Learned Counsels appearing in the matter recorded a Consent Order to have the Summons disposed of by affidavit evidence and written submissions.

I have considered the written submissions plus the affidavit evidence. It is the submission of the Applicant that the Respondent was not a wife of Ndung'u Gatu nor a relative of Phylis Wairimu Ndung'u, the deceased herein. The Applicant gave the history of the steps the Respondent had taken to show she is related to the deceased. He pointed out that at one time she claimed to be the only child of the deceased and later referred herself as the co-wife of the Applicant's mother and therefore as a wife of Ndung'u Gatu. It is further alleged that the Respondent stated that she was a wife to Peris Wairimu under Kikuyu Customary Law. It is also alleged that the Respondent failed to name neither the three daughters nor the Applicant as survivors and relatives of the deceased. For the above reasons, the Applicant urged this court to revoke the grant. The Respondent on her part is of the view that the application is a mere afterthought with no basis. It is apparent to me that the Respondent did not answer to specific allegations made by the Applicant. She did not address this court on her capacity before this court. She has also not explained to this court the reasons why she excluded the Applicant and three of the deceased's daughters as surviving the deceased. She has also not disputed the capacity of the Applicant and his siblings. In my humble view, I am convinced the Applicant has established the Summons. I grant the orders sought therein and direct that a fresh grant be issued in the name of Elijah Gatu who should thereafter apply for the grant notwithstanding that six months will not have lapsed from the date of this order.

**Dated and delivered this 17th day of August 2012.**

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**J. K. SERGON**

**JUDGE**