



IN THE MATTER OF THE ESTATE OF  
JOHNSTONE KAMANU GICHUKI *alias*  
KAMANU S/O GICHUKI.....DECEASED

**AND**

JANE WANJIRU KAMANU )

ROBERT KAMAU KAMANU).....PETITIONER

**R U L I N G**

The subject matter of this ruling is the summons for revocation of grant dated 31<sup>st</sup> march 2011 taken out by Wilson Wachiuri Kamanu and Gatundu Gichuki, hereinafter referred to as the 1<sup>st</sup> and 2<sup>nd</sup> applicants in which they sought for the grant of letters of administration intestate in respect of the estate of Johnstone Kamanu Gichuki ALIAS Kamanu Gichuki, deceased issued to Jane Wanjiru Kamau and Robert Kamau Kamanu on 20/11/2007 and confirmed on 20/11/2009 and confirmed on 20/11/2009 revoked. The summons is supported by the affidavit of Wilson Wachiuri Kamanu. Jane Wanjiru Kamau and Robert Kamau Kamanu the respondent opposed the summons for revocation of grant by filing a replying affidavit she swore on 6<sup>th</sup> October 2011. When the application came up for hearing, the parties agreed to have the dispute disposed of by affidavit evidence and written submissions.

I have considered the affidavit evidence plus the submissions presented to this court. It is the applicants' submission that the respondents are guilty of material non-disclosure hence the grant should be revoked. It is averred that the children of the first house were not notified nor involved when filing the succession cause. It is also alleged that the Respondents did not take into account the share due to the 2<sup>nd</sup> Applicant held by the deceased in L.R. No. Aguthi/Gatitu/266. The applicants further accused the Respondents of intentionally leaving out L.R. No. Ewasonyiro/Olpejeta Block 1/369 as an asset of the estate which is available for distribution. In response the Respondents stated that the Applicants were aware of the filing of the succession proceedings from the beginning. She invited this court to look at the record which shows that all the beneficiaries were present and did not raise any objection against the application for confirmation of grant. It is further argued that the applicants are aware that during the lifetime of the deceased it was clear that L.R. No. Aguthi/Gatitu/266 would go to the 2<sup>nd</sup> house while L.R. No. Gakawa/Githima B1/Burguret/784 would go to the 1<sup>st</sup> house. The Respondent attached to the replying affidavit of Jane Wanjiru Kamanu, a copy of a memorandum of understanding showing that the 2<sup>nd</sup> applicant had agreed to surrender his portion in L.R. No. Aguthi/Gatitu/266 in exchange with L.R. No. Ewasonyiro/Olpejeta Block 1/369. The 2<sup>nd</sup> Applicant was to clear a balance of Kshs.80,862 to complete the exchange. The Respondent further stated that it is clear from the confirmed grant that the Applicants were catered for. The respondents' view is that their mode of distribution is fair and equitable. Having considered the material placed before me it is clear in my mind that the deceased was married to two wives namely:

(i) ***Pauline Wakiuru (now deceased)***

(ii) ***Jane Wanjiru Kamanu***

The Respondents have not controverted the Applicants' allegation that the 1<sup>st</sup> house had five children while the 2<sup>nd</sup> house had two children. The Respondents have argued that the 2<sup>nd</sup> house was to get to L.R. No. Aguthi/Gatitu/266 after the agreement between the 2<sup>nd</sup> applicant (Gatundu Gichuki) and the deceased. The 2<sup>nd</sup> Applicant was then allocated L.R. No. Ewasonyiro/Olpejeta Block 1/869 where he currently resides. The Respondents further pointed out that L.R. No. Gakawa/Githima B1/Burguret/784 was to be registered in the name of the 1<sup>st</sup> Applicant in trust for himself and for the other beneficiaries. The Respondents further alleged that L.R. No. Ewasonyiro/Olpejeta Block 1/369 could not

be included in the succession cause because the 2<sup>nd</sup> applicant personally refused claiming he had not settled the outstanding debt i.e. a sum of Kshs.30,362. The Respondent also stated that the Applicant signed the consent authorizing confirmation of grant. The 1<sup>st</sup> Applicant avers that those signatures are forgeries. It is important to note that the Respondent did not controvert the assertion that the signatures attached to the Applicants as consenting the distribution of the estate are forgeries. In my view, there are too many questions which have remained unanswered. If there was proper consultation as alluded by the Respondents then, why did the Respondent and her own son jointly apply to administer the estate yet the 1<sup>st</sup> Applicant was available. It is possible that not all the beneficiaries attended court when the grant came up for confirmation. I am not convinced by the explanation given by the Respondents as to why the parcel of land known as L.R. No.Ewasonyiro/Olpejeta Block 1/369 was not included as part of the estate. I have looked at the affidavit filed in support of the petition for letters of administration and it is clear that the beneficiaries or children of the 1<sup>st</sup> house are all adults. I do not understand why the 1<sup>st</sup> Respondent should be registered as holding the property known as L.R. No.Gakawa/Githima Block 1/Burguret/784 in trust for himself and for others. I am convinced the Respondents did not disclose material facts thus the confirmed grant must be revoked. I hereby find the summons for revocation of grant dated 31<sup>st</sup> March 2011 to be well founded. It is allowed as prayed save that each party shall meet his or her own costs. A fresh grant be reissued in the joint names of Jane Wanjiru Kamanu and Wilson Wachiuri Kamanu. The duo may jointly or separately apply for confirmation of grant notwithstanding that six months will not have lapsed from the date hereof.

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

**J.K. SERGON  
JUDGE**