



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**SUCCESSION CAUSE NO. 82 OF 1990**

IN THE MATTER OF THE ESTATE OF PATRICK WAGURA KAHUGU (DECEASED)

<b>JOSEPH THAMAINI WAGURA.....</b>	<b>1<sup>ST</sup> APPLICANT</b>
<b>JAMES GITONGA WAGURA.....</b>	<b>2<sup>ND</sup> APPLICANT</b>
<b>SUSAN WANJIRU WAGURA.....</b>	<b>3<sup>RD</sup> APPLICANT</b>
<b>ANN THERESA WANJIKU.....</b>	<b>4<sup>TH</sup> APPLICANT</b>
<b>MARY GORETTI WANJIRA.....</b>	<b>5<sup>TH</sup> APPLICANT</b>
<b>MARY WAIRIMU WAGURA.....</b>	<b>6<sup>TH</sup> APPLICANT</b>

**VERSUS**

<b>JOHN WAMBUGU WAGURA.....</b>	<b>1<sup>ST</sup> RESPONDENT</b>
<b>PETER KAHUGU WAGURA.....</b>	<b>2<sup>ND</sup> RESPONDENT</b>

**RULING**

The subject matter of this ruling is the Summons for Revocation or Annulment of Grant dated 18<sup>th</sup> December 2008 in which **Joseph Thamaini Wagura & 5 others** being the Applicants herein applied for the confirmed grant issued on 22<sup>nd</sup> April 1993 to John Wambugu Wagura revoked and or annulled. The Summons is supported by the affidavit of James Gitonga Wagura sworn on 18<sup>th</sup> December 2008. **John Wambugu Wagura**, the 1<sup>st</sup> Respondent herein filed a replying affidavit to oppose the Summons. James Gitonga Wagura filed a replying affidavit to answer the replying affidavit of John Wambugu Wagura.

I have considered the grounds set out on the face of the summons for revocation and or annulment of Grant plus the averments contained in the affidavits filed for and against the Summons. I have further considered the oral submissions of learned counsels from both sides. It is the submission of the Applicants that the grant was obtained fraudulently and by the making of a false statement or by concealment from the court their interest in the Estate. It is further argued that the grant was obtained by means of an untrue allegation of a fact essential in law to justify the grant. It is also alleged that the administrator had failed to proceed diligently with the administration of the Estate. The Applicant further argued that the grant has become useless and inoperative.

The Respondents on their part have argued that the firm of Waweru Gatonye & co. Advocates acted for both the family and the administrator. It is argued that the same firm has now acted for the Applicant as against the administrator. The respondent pointed that this is the second application for revocation of grant. The first application is said to be dated 9<sup>th</sup> September 1993 where the firm of Waweru Gatonye & co. Advocates acted for the family. It is said he even filed grounds of opposition dated 18<sup>th</sup> October 1993 against the aforesaid summons. The first application was heard and found to be

without merit. It would appear the court found that no fraud was committed by Lady Justice Ang'awa. It is also argued that the Respondent and the Applicants were aware of the pendency of Nyeri H.C.C.C. No. 115 of 1984 and H.C. Succ. Cause No. 82 of 1990. In fact it is alleged that the respondent was mandated by the family to pursue those cases on behalf of the Estate.

Having considered the material placed before me and the oral submissions, it is clear that this is the second application filed to have the grant revoked. The 1<sup>st</sup> application was heard and dismissed by Lady Justice Ang'awa. The honourable judge came to the conclusion in her ruling delivered on 29<sup>th</sup> October 1993 that there was no prove of fraud nor concealment of material facts. The Applicants herein have attempted to circumvent the aforesaid findings by introducing some factors which took place after the grant was issued and confirmed. It is obvious that the law under *Section 76* of the Law of Succession Act did not envisage factors which took place after the grant has been confirmed to be taken into account in revoking the grant save for the ground that the grant has become useless and in operative. It is also admitted by the firm of Waweru Gatonye & co. Advocates that it acted for both sides in the dispute. That is not permissible in our adversarial legal system. On my part, I have not found any iota of evidence to show that the grant was obtained fraudulently nor by the making of a false statement. Even if there was such evidence, I doubt whether I would have allowed the application in view of the ruling of Lady Justice Ang'awa which has not been challenged on appeal.

In the end and on the basis of the above reasons, I find the summons dated 18<sup>th</sup> December 2008 to be without any merit. It is dismissed. Let the Respondent proceed to complete the administration of the Estate according to law expeditiously. Since the dispute involves members of the same family, I direct that each party meets his or her own costs.

***Dated and delivered at Nyeri this 23<sup>rd</sup> day of September 2011.***

**J. K. SERGON**  
**JUDGE**

In open court in the presence of Njenga holding brief Wanga for the Applicant/Objector. Mr. Karweru for the Respondents.