



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**  
**Succession Cause 130 of 1995**

**IN THE MATTER OF THE ESTATE OF THUITA KAARA alias PAUL THUITA KAARA – DECEASED**

**TERESA WAMBUI WAMAE.....APPLICANT**

**VERSUS**

**JOHN KAHIGA THUITA.....PETITIONER/1<sup>ST</sup> RESPONDENT**

**JOHN WAMAE THUITA.....PROTESTOR/2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

The subject matter of this decision is the application dated 7<sup>th</sup> December 2009 in which TERESIA WAMBUI WAMAE, the applicant herein, is seeking for the Grant of Letters of Administration intestate in respect of the Estate of Thuita Kaara alias Paul Thuita Kaara, deceased, issued to JOHN KAHIGA THUITA and JOHN WAMAE THUITA hereinafter referred to as the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, to be revoked and or annulled. The Summons is supported by the affidavit of the Applicant sworn on 7<sup>th</sup> December 2010. When served with the aforesaid summons, the 1<sup>st</sup> Respondent, filed a replying affidavit he swore on 4<sup>th</sup> March 2010. DAVID KIRAGU MAKARU and SIMON GITHINJI KINGORI each swore an affidavit in support of the application for revocation of grant.

The main ground (s) advanced by the Applicant is that she was not consulted by the Respondents before the filing of the petition for Letters of Administration. It is also alleged that the Respondents inherited the Estate and excluded the Applicant yet she is the biological daughter of the deceased.

The 1<sup>st</sup> Respondent in his replying affidavit conceded that he did not involve the Applicant in the succession proceedings yet he knew she was the deceased's daughter. Surprising, the 2<sup>nd</sup> Respondent did not file any response to the application. The 1<sup>st</sup> Respondent stated that he did not mean to disinherit the Applicant but that he was holding the parcel of land known as OTHAYA/KIANDEMI/228 in trust for himself and the Applicant. The 1<sup>st</sup> Respondent further averred that the deceased had intimated to him that the land be should measures in equal shares between him and the Applicant.

I have considered the grounds set out on the face of the summons for revocation of grant and the facts deponed in affidavits filed in support and in response. There is no doubt that the 1<sup>st</sup> Respondent and the Applicant are a brother and a sister. It is also admitted by the 1<sup>st</sup> Respondent that he did not include the Applicant in the sharing of the parcel of land known as L.R. NO. OTHAYA/KIANDEMI/228. It is further conceded by the 1<sup>st</sup> Respondent that the Applicant is entitled to half of the aforesaid land. It is clear from the attached application for consent and the mutation forms that the Respondents intended to share the aforesaid parcel of land in equal measures to the exclusion of the Applicant. The certificate of the confirmed grant is quite explicit that the land was to be inherited by the Respondents in equal measures. The 1<sup>st</sup> Respondent did not indicate in his affidavit filed in support of the petition for Letters of Administration that the deceased was survived by the Applicant herein. In fact the 2<sup>nd</sup> Respondent had filed an objection to the grant being given to the 1<sup>st</sup> Respondent on the ground that the 1<sup>st</sup> Respondent had failed to disclose in his petition that the deceased was survived by other children. The Protest was found in favour of the

2<sup>nd</sup> Respondent so that the subject parcel of land was directed to be shared in equal measures between the Respondents. None of the Respondents disclosed to the judge who heard the Protest and the summons for Confirmation of Grant that the Applicant was a surviving beneficiary. I have formed the opinion that the 1<sup>st</sup> Respondent was not candid to this Court right from the beginning. The 2<sup>nd</sup> Respondent did not bother to respond to the Applicant's application. He is equally guilty of material non-disclosure. The duo intentionally wanted to disinherit the Applicant herein. In the end I find the summons for Revocation of Grant to be well founded. The confirmed grant is revoked. A fresh grant be issued in the names of the trio i.e. the Applicant and the two Respondents. Let the aforesaid parcel of land be distributed according to the provisions of *Section 38* of the Law of succession Act. It is upon evidence of compliance with the above directive that the grant may be confirmed. Costs of the proceedings to be met by the Respondents.

***Dated and delivered at Nyeri this 15<sup>th</sup> day of June 2010 .***

**J. K. SERGON**

**JUDGE**

In open court in the presence of Mr. Kimunya holding brief Mbau Gitahi for Applicant/Respondents present in person.