



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

Succession Cause 284 of 2010

**IN THE MATTER OF THE ESTATE OF HARUN MWANIKI ALIAS ARON KANGU
MWANIKI ALIAS HARON KANGU MWANIKI – DECEASED**

ARTHUR MACHARIA HARUN.....1ST APPLICANT
DORAH NYAMBURA HARUN.....2ND APPLICANT
GLADYS WAITHERA HARUN.....3RD APPLICANT

VERSUS

NAFTALY MWANIKI KANGU.....1ST RESPONDENT
ELIZARIO KIMEMIA HARUN.....2ND RESPONDENT

RULING

The subject matter of this ruling is the summons for revocation of grant dated 10th March 2010 in which **ARTHUR MACHARIA HARUN, DORAH NYAMBURA HARUN** and **GLADYS WAITHERA HARUN** hereinafter referred to as the “1st, 2nd, and 3rd applicants” are praying for the following orders:

1. *The Grant of letters of administration issued to NAFTALI MWANIKI KANGU and ELIZARIO KIMEMIA HARUN on 11th August 1988 and confirmed on 19th May 2000 at Muranga Law Courts Succession Cause No. 394 of 1986 be revoked (or annulled) on the grounds that:-*
 - (i) *The proceedings to obtain the grant were defective in substance.*
 - (ii) *The Grant was obtained fraudulently by the making of a false statement and concealment from the court of something material to the case.*
 - (iii) *That grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance of inadvertently.*
 - (iv) *The 1st petitioner, Naftali Mwaniki Kungu, deliberately concealed the existence of the proceedings herein from the Applicants.*
 - (v) *That no consent was obtained from the Applicant for the making of the said Grant.*
2. *THAT the Honourable Court do issue an order of injunction restraining the purported administrator NAFTALI MWANIKI KANGU his agents or representatives from transferring to himself, selling, subdividing, alienating and or in any manner whatsoever in interfering with the deceased properties until determination of this suit.*
3. *THAT the costs of this application be provided for.”*

The Summons is supported by the affidavit of Arthur Macharia Harun sworn on 10th March 2010. **NAFTALY MWANIKI KUNGU**, hereinafter referred to as the “1st Respondent”, opposed the summons by filing the replying affidavit he swore on 24th May 2010. Learned counsels appearing in this cause recorded a consent order to have the dispute disposed of by affidavit evidence and by written submissions.

I have considered the affidavit evidence and the submissions filed by both sides. The applicants have sought for the confirmed grant to be revoked and or annulled because the Respondent is alleged to have deliberately concealed from the Applicants the existence of the proceedings at the subordinate court. It is said the Applicants came to know of these proceedings long after the grant was issued and

confirmed vide **MURANGA R.M. C. SUCC. CAUSE NO. 394 OF 1986**. The Applicants claimed that they did not give their consent despite the fact that they are equally entitled to inherit the Estate as beneficiaries. It is averred by the Applicants that they only came to know of the existence of those proceedings when the Respondents attempted to sub-divide the deceased's land after which they moved with speed to have the grant revoked. It is further alleged that the Respondents have now embarked on sub-dividing, selling, alienating and interfering with the deceased's land to the detriment of other beneficiaries.

The Respondents on their part opposed the summons on the following grounds: First, is that the Summons for Revocation of Grant was filed too late. It is the submission of the Respondents that they obtained temporary Letters of Administration on 11th August 1988 which was confirmed on 19th May 2000. They are of the view that the Applicants have failed to disclose when they learnt of the existence of the proceedings at Muranga Magistrate's Court. Secondly, it is contended that the 1st Applicant signed the consent authorizing the Respondents to take out the Letters of Administration hence cannot be heard to contest factual matters which he did not controvert. It is alleged that the 1st Applicant was aware of the existence of the succession proceedings and that he even filed an affidavit of protest to object to the schedule of distribution. Thirdly, that the Law of Succession Act, did not apply to the deceased's Estate because he died in 1977 before the aforesaid Act came into operation. The Respondents alleged that married daughters were not entitled to inherit their father's Estate under Kikuyu customary law.

Having considered the rival submissions, I have formed the following view of the matter. The main thrust of the Applicants' application is that they were not informed of the existence of the **MURANG'A R. M. SUCC. CAUSE NO. 394 OF 1986**. They say they did not give any consent to the Respondents to take out Letters of Administration. There is no dispute that a Grant of Letters of Administration intestate in respect of the Estate of Harun Mwaniki alias Aron Kangu Mwaniki alias Haron Kungu Mwaniki, deceased was issued in the joint names of Elizario Kimemia and Naftaly Mwaniki Kangu vide **MURANG'A R. M. SUCC. CAUSE NO. 394 OF 1986**. The record shows that Naftaly Mwaniki Kangu, applied for the grant to be confirmed. Annexed to the replying affidavit of Naftaly Mwaniki Kangu is a copy of the affidavit of protest of Elizario Kimemia Harun and that of Arthur Harun Macharia. The duo were opposed to the manner of distribution of the Estate proposed by Naftaly Mwaniki Kangu. The Applicants did not controvert the aforesaid facts deponed in an affidavit. I am convinced that the Applicants were aware of the existence of succession cause pending before the Muranga Resident Magistrate's Court. They have not denied they lodged a protest. I find the main ground relied upon by the Applicants to be unproved. Having found that the Applicants were privy to the existence of the succession cause at Murang'a Resident Magistrate's Court, then it is obvious that the Applicants are guilty of delay. Such disputes must come to rest. The applicants have themselves to blame for they were indolent in filing the application for revocation and or annulment of grant.

In the end I find the Summons for revocation and annulment of grant dated 10th March 2010 to be without merit. It is dismissed with no order as to costs.

Dated and delivered at Nyeri this 7th day of October 2010.

J. K. SERGON
JUDGE

In open court in the presence of Mr. Karweru holding brief Njagi for Applicant Kionin holding brief Wanganyoi for Respondent.