



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**SUCCESSION CAUSE NO. 46 OF 2008**

**IN THE MATTER OF THE ESTATE OF JOHN KURIA KIMANI - DECEASED**

**TERESIAH WANJIKU**

**GACHUGI.....APPLICANT**

**VERSUS**

**MAINA KURIA.....1<sup>ST</sup> RESPONDENT**

**ALICE WANGARI KURIA.....2<sup>ND</sup>  
RESPONDENT**

**RULING**

This Ruling relates to an Application by way of a Chamber Summons dated 15<sup>th</sup> September, 2010 and filed on 16<sup>th</sup> September (*the Application*). The Applicant, Teresia Wanjiku Gachugi sought two orders -

- (a) *annulment/revocation of the grant confirmed on 27<sup>th</sup> April 2009; and*
- (b) *costs of the application be provided for.*

The application was supported by the Affidavit of the Applicant sworn on 15<sup>th</sup> September, 2010 and the principal grounds for revocation or annulment of a grant -

- (i) *that the grant was obtained fraudulently by making a false statement and concealment of a material fact that is to say that one Salome Wangui Kimani who is not a beneficiary of the estate (was included).*

(ii) that all papers relating to the cause were not signed by the Applicant as alleged by the Respondents.

(iii) the grant was obtained by means of untrue allegations that the applicant had signed the necessary forms and participated in the proceedings of the grant while she had not done so.

The Application was opposed by the joint Replying Affidavit of the Respondents sworn on 21<sup>st</sup> October 2010 and filed on 22<sup>nd</sup> October 2010 stating in essence that the grant was obtained openly without concealment of any material fact and with the active participation of the applicant.

In addition to the grounds and supporting affidavit of the Applicant the Applicant as well as the Respondents called oral evidence which the court allowed to be taken in support of the respective positions of the Applicant and the Respondents.

For the applicant, her son, Frederick Kuria ("Fred") gave evidence to the effect that the deceased, John Kuria Kimani, had three wives or houses namely-

#### 1<sup>st</sup> House

(1) Njeri Kuria - Widow

(2) Teresia Wanjiru Gachugi - Widow

(3) Alice Wangari - Widow

Frederick Kuria also testified that his late father had one property plot Number 102 whose title was kept by his 3<sup>rd</sup> wife, Alice Wangari. That property was sub-divided and produced four sub-divisions No. 259, 260, 261 and 262. Out of these plots, Fred testified, Plot No. 261 was sold to a purchaser called "**Kiragu**" while Plot No. 262 was also sold to **Bernard Mwangi Mitambo**. Fred testified that there was no dispute in respect of these plots or sale thereof. There was no objection to the allotment of **Plot No. 7/92** Iriani to Julius Macharia Nduati as purchaser.

Fred testified however that the Applicant objects to the distribution of Plot No. 260 comprised of eight (8) acres out of which Bernard Mwangi Mitambo is to receive 2 acres while Alice Wangari is to receive six (6) acres. The applicant also objects to the grant of 0.75 acres to Maina Kuria and out of the said Plot No. 262.

Fred testified that his mother's case is that the six (6) acres of Plot No. 260 and Plots Nos 259 and 262 which together with the sold and distributed plots add up to 22.5 acres should be distributed equally among the three widows of the late John Kuria Kimani.

Fred also testified that the Applicant also objects to the distribution of the Breweries shares, and that these should be divided equally among the three houses and that since he had no information on the Dundori

plot, he or the applicant had no objection to any member of the family having it, but that each of the widows should have a share of the estate, and should remain in her portion of the land.

Fred concluded that for those reasons, the Grant should be rectified, as the applicant was completely unaware of the distribution.

On his part, Maina Kuria the 1<sup>st</sup> Respondent who swore the Replying Affidavit first referred to above on his own and on behalf of Alice Wangari Kuria, the 2<sup>nd</sup> Respondent testified that it was his father, the deceased who had sub-divided the land, and not him. The distribution should remain as per the Certificate of Confirmation of the Grant, that the estate should be distributed among the three houses and the deceased's sister Salome Wangui Kimani who is entitled to a portion of the land whether married or unmarried.

Maina reiterated that "***it is not true that the applicant was not involved in the distribution of the estate***" or put positively, the applicant was very much involved in the distribution of her late husband's estate.

Considering the pleadings in this matter, including the respective parties affidavits, in support, and in reply, and the evidence by Fred, it is clear to me that what the applicant really desired is not the revocation or annulment of the Grant of representation but rather rectification thereof to suit her wishes, and not necessarily that there was anything inherently amiss or wrong with the distribution.

In the testimony of Fredrick Kuria the Applicant argued a case completely different from the application for revocation or annulment of the grant. In fact there was no evidence of concealment of any material fact or any false statement on the part of the Respondents. If there was, the Applicant would have replied to, and refuted the detailed Replying Affidavit of the Respondents, in response to paragraphs 6 and 7 thereof, that Salome Wangui Kimani is one of the beneficiaries of the estate as per the wishes of her late brother (para. 6) and had the Applicant Teresia Wanjiru Gachugi is one of the wives of the deceased and it is a fact that she deserted the deceased in 1974 and only resurfaced just recently to claim the estate of the deceased, (para 7) and that the Applicant's claim that she was not consulted in pure falsehood (para 8), and that the claim that her signature was forged as a criminal offence, she has the right to prove the same before any court of law as she herself appended her signature on the documents presented to court on her own volition (para. 9).

Section 76 of the Law of Succession Act (Cap. 160, Laws of Kenya) sets out the grounds upon which a Grant of Letters of Representation whether confirmed or not may be annulled or revoked, either by the Court of its own motion if it so decides, or on the application of an interested party.

In this case, I am satisfied that there is no proof of any falsehood, material concealment or fraudulent misstatement which has been shown by the Applicant to prove that grant of representation was obtained fraudulently, or indeed that the Applicant never took part in or was never involved in the distribution of the deceased's estate. The applicant declined to respond to material claims against her application, and the court must therefore take cognizance of those averments, and say that the Applicant's application has no basis at all and is as the Respondents contended, merely a repetition of non-cooperation the applicant exhibited while the deceased was alive. The application is thus a waste of valuable judicial time, and is, in the circumstances found to have no merit at all, and is dismissed with costs to the Respondents.

There shall be orders accordingly.

**Dated, delivered and signed at Nakuru this 10<sup>th</sup> day of December 2010**

**M. J. ANYARA EMUKULE**

**JUDGE**