

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Succession Cause 73 of 2004

TERESIA WAWIRA NYAGA.....APPLICANT

VERSUS

FRANCIS NJOGU NYAGA.....RESPONDENT

RULING

The Petitioner/Respondent filed ***Succession Cause No. 262/95 before the Senior Principal Magistrate's Court Embu in 1995.*** He filed the same in his capacity as a son of the deceased one Nyaga Kirige. In his P& A 5 forms, he listed only himself, his mother, one Charles Kathuri Nyaga (brother) and a grandson of the deceased. He therefore excluded his sisters. The proceedings before the subordinate court shows that indeed these sisters who were daughters to the deceased were not consulted and had not given their consent to the filing of the Succession Cause. The grant of letters of administration was issued to the petitioner and the same was confirmed. One of his sisters Teresia Wawira Nyaga was not happy with the distribution and she therefore moved to this court for revocation or annulment of the said grant. She also obtained orders preserving the said estate. The parties testified in court but no witnesses were called. According to the applicant, she wants the grant to be revoked so that all the beneficiaries can be involved in the cause and their respective shares be indicated. The petitioner/Respondent on the other hand, alleges that the applicant and the other 2 sisters knew about the Succession Cause but that they failed to file any protest before the lower court. He told the court that the 2 acres of land allocated to their mother was meant to be shared between herself and her 3 daughters. The certificate of confirmation of the grant however does not say so. It only gives the 2 acres to the deceased's widow **NICETA WANJAGI** and she wants to be at liberty to dispose it to anybody else thus leaving out the applicant and her sisters.

The interests of the daughters of the deceased were left out. They were not even consulted when the Succession Cause was filed. Their consents should have been filed with the petition itself. The petition was therefore filed without disclosing the existence of other beneficiaries and that was material information which was concealed. This would render the petition to be annulled and or revoked.

For those reasons, I find that the applicant has established a good case for revocation of the grant. I allow the application and order that the grant of letters of administration issued to the petitioner/Respondent herein be and is hereby revoked. Parties to reapply in the usual manner.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 2nd day of June 2009.

In presence of:-Mr. Ithiga for Utuku and Mr. Okwaro.

W. KARANJA

JUDGE

2/7/2009.