

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NYERI

Misc Appli 133 of 2002

MARY KANINI NJINE.....APPLICANT

Versus

STEPHEN NDEGWA MWANGI

FRANCIS NJERU NJINE

IRENE WOTHAYA.....RESPONDENTS

RULING

The Applicant has brought a summons dated 27th March 2002. In that application the Applicant Mary Kanini Njine seeks that the Grant of Letters of Administration issued to Francis Njeru Njine on 21st June 1998 in RMCC SUC. No. 77 of 1977 be revoked. The basis of seeking that order is that the application to obtain the grant and confirmation of grant were defective in substance. That the grant was obtained fraudulently by making false statements or by concealment from the court material to the cause. Further that the confirmation was by means of untrue allegations of facts. In the affidavit in support the Applicant stated that the deceased Njine Mwara was her husband. She lived with him and her children on property **NGARIAMA/MERICHI/461** but she later learnt that Francis Njeru Njine had applied for Letters of Administration to the estate of her late husband. She confirmed that she is the widow of the deceased and she was not informed of the petition and since she lives in the rural area she did not discover that the petition had been filed. That in filing for the Petition the said Njine fraudulently misrepresented material facts to the court. In that regard she relied on the judgment of the criminal case No. 2897 of 2000 against the said Francis Njeru Njine. The particulars of the charge against him were as follows:

“that on the 11th day of January, 1988 at Kerugoya Law Court before Miss Florence Muchemi a Resident Magistrate and a person authorised to administer an oath sworn falsely upon a matter of public concern that he was the only surviving heir to the estate of Njine Mwara.”

He was convicted and sentenced of the charge of false swearing contrary to *Section 114* of the Penal Code.

In opposition affidavits in reply were filed by persons who claim to be purchasers of the property belonging to the estate. They opposed the revocation of the grant because they had purchased some portions of the estate property from the Petitioner Francis Njeru Njine. They deponed that they are innocent buyers for value. In his replying affidavit the Petitioner stated that he had sold property **NGARIAMA/MERICHI/461** and **Plot No. 27 Kianyaga**. He said that the only property remaining was 1.12 hectares registered as **NGIRIAMA/MERICHI.1416**. He therefore said that the present application is overtaken by events.

Section 76 provides the conditions on which the court will revoke or annul a grant. A grant will be revoked or annulled even after confirmation where the proceedings of obtaining such a grant are defective in substance or where it is obtained by fraudulently making false statements amongst other grounds. The Applicant being a widow is the preferred person to be allowed to get the grant of the estate of her

husband. See *Section 66* of the Law of Succession Act. That being the case and since what is before court is an application to revoke the grant, the court finds that the application is merited. At this stage the court is not concerned on whether the property of the estate has been sold. Accordingly the court does hereby revoke the Grant of Letters of Administration issued to Francis Njeru Njine on 21st June 1998 in RM SUC Cause NO. 77 of 1987. The Applicant Mary Kanini Njine is awarded the costs of the summons dated 27th March 2002 as against Francis Njeru Njine.

Dated and delivered at Nyeri this 2nd day of October 2007.

MARY KASANGO

JUDGE