



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**Succession Cause 41 of 2001**

**IN THE MATTER OF THE ESTATED OF F K K**

**(DECEASED)**

**A W K .....APPLICANT**

**V E R S U S**

**P M N .....1<sup>ST</sup> RESPONDENT**

**J N K .....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

The Applicant, A W K sought for order of the revocation of the Grant of Letters of Administration issued on the 20<sup>th</sup> March 2000 in Succession cause No 26 before the Principal Magistrate Court in Kiambu.

The Grant of Letters of Administration were issued to the Respondents Peninah Muthoni who claimed to be a wife of the deceased and J N K. This application is premised on the grounds that the grant was obtained fraudulently by making of a false statement that the persons were the widow and son of the deceased respectively whereas the Applicant herein is the legal wife of the deceased who was also survived by 5 children and a mother.

Secondly the grant was obtained pursuant to defective proceedings as there was no consent nor were citations issued to the deceased other beneficiaries. The directions as the hearing and determination of this dispute were given that the matter be heard by way of oral evidence.

The Respondents and their legal Counsel did not attend court during the hearing despite the fact that they were duly notified of the hearing date. During the hearing the Applicant presented oral evidence in support of the application and further to the supporting affidavit that was filed with the summons for revocation.

The Applicant produced the marriage certificate to show that she was married to the deceased on 7<sup>th</sup> day of March 1981 at a church ceremony held at our Lady's Cathedral Nyeri and the said marriage was never dissolved and as at the time of the deceased passed away the said marriage was still in subsistence.

They were blessed with the following children.

1. J W born in 1982

2. K K born in 1984
3. I N born in 1986
4. B N born in 2000

The Applicant produced birth certificates for these children whereby the name of the father of the children is indicated as F K K. Further the Applicant stated that she and the deceased owned a property known as [particulars withheld] whereby they have the family's matrimonial home. The deceased also own another property in [particulars withheld] whereby the deceased is entitled to one third of the title. The deceased was also entitled to a pension as he was a Civil Servant working in the Ministry of Lands. The Applicant also referred to a letter by the Area Chief of Karura sub-location introducing her and the children as the legal wife of the deceased with her children.

I have considered the material that was placed before me in support of the application for the revocation. The Respondent did not attend court to defend themselves and in the absence of evidence to contradict the Applicant's evidence, I am satisfied that the Applicant has proved her case to the required standard that she is the legal wife of the deceased entitled in higher priority to the Grant of Letters of Administration in respect of the deceased estate.

I am satisfied that the Applicant ought to have been notified with her children of the petition for the Grant of Letter of Administration and that the grants was fraudulently obtained through concealment of material facts that is the existence of the Applicant and her children.

Accordingly I hereby revoke the grant that was issued to the Respondents in the succession cause no 26 of 2000 by the Kiambu court. In the interest of justice and in order to expedite the determination of the estate, I hereby direct that another grant be issued to the Applicant and the deceased mother as follows:-

A W K and M W K n K who should forthwith apply for confirmation of the grant with due notice to the Respondent and her children.

The Applicant should have the cost of the application.

It is so ordered.

Ruling read and signed on 20/1/06

**M. Koome**

**Judge**