



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT MOMBASA**

**Succession Cause 11 of 2004**

**IN THE MATTER OF THE ESTATE OF:**

**MARGARET WAHU KIMANI .....DECEASED**

**AND**

**FLORENCE EMILY WANJIKU .....APPLICANT**

**RULING**

In a summons filed pursuant to rule 44 of the Probate and Administration Rules, Ndungu Kimani applied to have the letters of administration in respect of the estate of Margaret Wahu Kimani (deceased) issued to Florence Emily Wanjiku on 15-9-2004 revoked. He swore an affidavit in support of the summons for revocation of grant. On her part Florence Emily Wanjiku opposed the summons by filing a replying affidavit.

The gist of the Applicant's ground is that Florence Emily Wanjiku obtained the grant fraudulently by making a false statement and by concealing material facts before this court. It is the averment of Ndungu Kimani that Margaret Wahu Kimani (deceased) had no children hence it was wrong for Florence Wanjiku to claim she was the deceased's daughter yet she is a niece to the deceased. In response to this submission, the Respondent argued that she was adopted by the deceased at an early age as her daughter. She even attached to her replying affidavit documents showing that she lived with the deceased and that the deceased took her to school and paid for her school fees and her upkeep. It appears these facts are not contended by an affidavit save for submissions made from the bar.

What appears from this dispute is that Florence Wanjiku is a niece to the deceased. It is not clear whether or not she was adopted by the deceased. It is not denied that she lived with the deceased in Mombasa. It is the submission of Ndungu Kimani that he is the only one entitled to apply for the letters because he is the only surviving brother to the deceased. He accused Florence Emily Wanjiku of keeping the succession proceedings in secret.

After a careful consideration of the matter I am unable to agree that Florence Emily Wanjiku obtained the grant by fraud. There is evidence that the same was advertised in the Kenya Gazette and no objections were received within the statutory period. The main complaint of Ndungu Kimani is that he is entitled to apply for letters in respect of the deceased estate as opposed to Florence Emily Wanjiku. The fact remains that the duo have a right by virtue of their blood relationship with the deceased to seek for letters of administration in respect of Margaret Wahu Kimani, deceased.. In the entire summons for revocation of grant Ndungu Kimani does not claim he is a beneficiary or dependant to the estate of Margaret Wahu Kimani (deceased). He does not deny the fact that Florence Emily Wanjiku is a beneficiary and a dependant to that estate. The allegations of fraud made against the Petitioner have not been proved to the standard required. In view of that I dismiss the application with costs to the Petitioner.

Dated and delivered this 19<sup>th</sup> day of October, 2006

**J. K. SERGON**

JUDGE

In open court in the absence of the parties.