

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
P & A CAUSE NO. 174 OF 1985**

**IN THE MATTER OF ESTATE OF: GEORGE NDUNG’U GATUNIA
(DECEASED)**

MARGARET WANJERI NDUNG’U APPLICANT

- Versus -

FRED KANGARA1ST RESPONDENT

VIRGINIA WANGUI NDUNG’U 2ND RESPONDENT

R U L I N G

The deceased in this cause died on the 15th November 1983. A grant of letters of administration intestate in respect of his estate was issued by this court to the Public Trustee on the 6th November 1985.

By a petition dated the 16th July 1993 and expressed to be brought under Section 11 of the Public Trustee Act, Section 76(d) of the Law of Succession Act and Section 3 of the Civil Procedure Act, Fred Kangara, on his own behalf and on behalf of the other beneficiaries of the estate of the deceased, applied, inter alia for the revocation of the grant of letters of administration issued to the Public Trustee and the issue of a fresh grant to him jointly with Virginia Wangui Ndung’u and Margaret Wanjeri Ndung’u. The grounds upon which the petition was made included allegations that the Public Trustee had failed to provide for the petitioner and his siblings’ school fees and other expenses and that the Public Trustee in collaboration with his step mother had excluded them in the administration of the estate and that the Public Trustee had generally not administered the estate properly. It would appear that that application was allowed by the consent of the Petitioner’s Advocate and a representative of the Public Trustee. The grant which had been made to the Public Trustee was therefore revoked and a new grant was made to the Petitioner, Virginia Wangui Ndung’u and Margaret Wanjeri Ndung’u. When an application seeking the confirmation of the new grant and the distribution of the estate was made and served on Margaret Wanjeri Ndung’u, the Applicant in this application, she protested by filing this application.

This application seeks the revocation of the new grant mainly on the ground that it was fraudulently obtained without her consent or authority. When the matter went before the Honourable Justice Mwera on the 24th June 2004 he directed that viva voce evidence be taken.

The Applicant in addition to the supporting affidavit testified but did not call any witness. The Respondents also testified and never called any witnesses.

The Applicant testified that she did not know of the application and the order revoking the grant to the Public Trustee until the said application for confirmation of the new grant was served upon her daughter. She said she was not consulted on the matter and that she did not instruct M/s Kiarie Kariuki & Co. Advocates to include her name in the application for the new grant. In cross-examination she said that plot No. Mombasa/Block X/77, which was one of the estate properties, was transferred to her to enable her raise funds to pay off estate debts. She further stated the transfer was with the knowledge of his co-wife, the second Respondent.

In his testimony the first Respondent stated that the reason why he applied for the revocation of the grant to the Public Trustee was because the Public Trustee did not give them any money and that he transferred estate property to his step mother, the Applicant. He said there was nothing sinister about his application as he included the Applicant as one of the new administrators of the estate. In cross-examination he

admitted that he did not involve the Applicant or any of her children in the application for the revocation of the grant to the Public Trustee. The testimony of the second Respondent corroborated that of the first Respondent.

I have considered the evidence on record as well as the submissions by counsel for the parties. It is not in dispute that the Applicant was not involved and did not know of the Application which revoked the grant to the Public Trustee. She did not authorize the first Respondent to include her name in the application for a new grant. That information was concealed both from her and the court. In the circumstances this application must succeed.

Counsel for the Applicant has submitted that the administration of the estate should revert to the Public Trustee. I cannot make such order for two reasons. First, it is not sought in the application. Secondly, even if it was sought, going by the material placed before me, I do not think I would have granted it. This is because the Public Trustee has not filed any accounts in this cause. He has also transferred one of the properties of the estate to the Applicant under what appears to be questionable circumstances.

For these reasons I allow this application and revoke the interim grant of letters of administration issued by this court on the 12th October 1994 to Fred Kangara, Virginia Wangui Ndung'u and Margaret Wanjeri Ndung'u. Each party shall bear its own costs.

I hope the parties shall agree on who should apply for letters of administration to conclude the administration of the estate.

DATED and delivered this 30th day of November, 2004.

D.K. Maraga

Ag. JUDGE