



REPUBLIC OF KENYA



**In re Estate of Daniel Njogu Macharia (Deceased) (Succession Cause 7 of 2017) [2025] KEHC 2352 (KLR) (17 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2352 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
SUCCESSION CAUSE 7 OF 2017**

**MW MUIGAI, J**

**FEBRUARY 17, 2025**

**IN THE MATTER OF THE ESTATE OF DANIEL NJOGU MACHARIA DECEASED**

**BETWEEN**

**JOEL KABIU NJOGU ..... APPLICANT**

**AND**

**MARY NDUTA NJOGU ..... 1<sup>ST</sup> RESPONDENT**

**PAULINE WANJIKU NJOGU ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. Vide Petition dated 22nd November, 2011 and filed on 7th December, 2011, wherein the petitioners Mary Nduta Njogu And Pauline Wanjiku Njogu Petitioned For Grant Of Letters Of Administration Intestate Of The Estate Of Daniel Njogu Macharia (deceased) who died on 27th May, 1992 as per death certificate and domiciled in Kenya.
2. As per the Affidavit in support of Petition for Letters of Administration Intestate, the deceased died intestate and left the following surviving him; -  
as per Chief of Ithanga Location letter of 9/8/2011
  1. Gladys Wanjiku Njogu 1<sup>st</sup> Wife- (deceased)
    - A. Janet Wanjiru Njogu- Daughter
    - B. Esther Waringa Njogu- Daughter
    - C. Hannah Muthoni Njogu- Daughter
    - D. Joel Kavyu Njogu- Son



2. Mary Njoki Njogu- 2<sup>Nd</sup> Wife  
Pauline Wanjiku Njogu- 3<sup>Rd</sup> Wife
  - E. John Gitau Njogu- Son
  - F. Peter Kamande Njogu- Son
  - G. Simon Kambo Njogu- Son
  - H. Mary Wanjiru Njogu- Daughter
  - I. Joan Wachuka Njogu- Daughter
  - J. Bernard Ndung'u-son

### **Background**

3. The background of this matter is as follows;
  - a. Succession Cause 1892 of 2011 [Estate of Daniel Njogu Macharia] was filed in Nairobi High Court.
  - b. On 29/1/2013, the Trial Judge Hon.L. Kimaru confirmed grant and distributed the estate to Mary Njoki Njogu & Pauline Wanjiku Njogu [2<sup>nd</sup> & 3<sup>rd</sup> Wives of deceased as pleaded in the Petition]
  - c. The Application for Revocation/Annulment of Grant was filed on 8/8/2013 by the Applicant, son of the deceased Joel Kabiu Njogu.
  - d. By Ruling of 3/2/2017, Hon W.Musyoka J declared that the matter should be determined by viva voce evidence and not written submissions. Secondly, the suit property Machakos / Ndithini/Phase 2/209 was/is in Machakos County and the matter was transferred to be heard and determined in Machakos High Court.
  - e. The hearing commenced before Hon. D. K. Kemei J on 4/12/2019 in Machakos High Court and heard Objector PW1 Joel Kabiu Njogu.
  - f. This Court took over the matter on 24/11/2021 and proceedings were typed and copies of typed proceedings were availed to parties herein.
  - g. Further Hearing proceeded on 20/3/2023 with the evidence of DW1 Pauline Wanjiku Njogu. During her testimony she referred this Court to her statement and documents in a bundle that was not in the Court file at the time.
  - h. The bundle was later availed during the proceedings at cross examination of the witness, whereat Mr. Kituku, Counsel for the Objector raised objection to the production of the bundle of documents as it contained Witness Statements of 2 witnesses and documents apart from the ones allowed by the Court. Secondly, Mr Kituku stated that the 2 Witness statements were prejudicial to their case.
  - i. This Court admitted only documents that were filed as per the Court orders of 4/12/2019.
  - j. Mr. Kituku reiterated that accepting the whole bundle would not be fair as the Objector closed his case and to introduce new witnesses at this stage of the tail end of the matter is prejudicial. The parties/Counsel filed written Submissions and the Court delivered Ruling on 13/12/2023



### Summons For Revocation Dated 8.8.2013

4. Vide Summons for revocation dated 8.8.2013 the Applicant sought the following orders THAT:
1. That the grant of letters of Administration intestate made to Mary Nduta Njogu and Pauline Wanjiku on 18<sup>th</sup> April 2012 and confirmed on 29<sup>th</sup> January 2013 be revoked and annulled on the following grounds;
    - 1) The grant was obtained and confirmed fraudulently and by making false statement in/to Court, in that Pauline Wanjiku is not and has never been a wife to the deceased but wife to Mary Nduta Njogu.
      - i) All the children she has are not children of the deceased at all.
      - 2) The Grant was obtained by concealment in that , Mary Nduta Njogu Concealed To Court That The Present Applicant Joel Kabiu Njogu is the only son of the deceased and born to deceased's 1<sup>st</sup> wife who predeceased the deceased namely, Gladys Wanjiru Njogu
      - 3) The grant was obtained and confirmed by means of making untrue allegations of a fact essential in a point of law and material to the case. Mary Nduta Njogu Is In Fact The 2<sup>Nd</sup> Wife Of The Deceased After Gladys Wanjiru Njogu. Mary Nduta Njogu had/has no children of her own at all.

She falsely stated that she is 1<sup>st</sup> wife of the deceased and conspired with [Pauline Wanjiku] she procured under customary law of Woman to Woman Marriage and she was/is regarded as 3<sup>RD</sup> Wife of the deceased.
    - 4) The Confirmation of Grant resulted in totally disinheriting Joel Kabiu Njogu the whole of his biological father's estate essentially made up of agricultural land parcel Machakos/ Ndithi-ini II/209 measuring 5.0 acres vesting it to strangers.
    - 5) The Applicant, Joel Kabiu Njogu Occupied 3.5 Acres Out Of 1.5 Acres Occupied By Mary Nduta. Pauline Wanjiku Was Brought Post Homously By Mary Nduta Njogu

### Supporting Affidavit

6. Under Supporting Affidavit sworn by Joel Kabiu Njogu, the applicant herein deposed that the grant of letters of administration intestate of the estate of Daniel Njogu made to Mary Nduta Njogu and Pauline Njogu was obtained fraudulently by means of concealment by making of untrue allegation
7. Deposing that during the lifetime and to date the land parcel Machakos/ Ndithini Phase ii/209 measuring 5 acres was shared between him and Mary Nduta Njogu with him taking 3.5 acres while Mary occupied 1.5 acres.
8. It was his position that Pauline Wanjiku has never been a widow to Daniel Njogu and was brought by Mary Nduta Njogu as her wife under traditional practice in 1992 and that him and his sisters had been disinherited.
9. He deposed that Mary Nduta Njogu who is childless had embarked on evicting him and his family on the strength of the confirmed grant, that the land parcel was the only asset left by the deceased and that there was an arbitration that shared the land equitably between them and have lived peacefully.



## Replying Affidavit

10. The Application herein was opposed vide a Replying Affidavit dated 15<sup>th</sup> October, 2013 sworn by Pauline Wanjiku Njogu, the 2<sup>nd</sup> Respondent herein, wherein, she deposed inter alia that she was properly married by the deceased under the Kikuyu Customary law in 1983 and dowry was paid at her home in Kigumo on 10.08.1983.
11. It was her position that the applicant had not been disinherited as he claimed as he has his own parcel of land Machakos/Ndithini/Phase 2/208 measuring about 6 acres which was bequeathed to him by the deceased and which is registered in his name and that all the dependents consented to the mode of distribution that her and her co wife be given the only asset in the estate the parcel known as Machakos/Ndithini/Phase II/209
12. According to the 2<sup>nd</sup> Respondent, there was no concealment of facts as alleged by the applicant as he was very much aware of the administration of the estate after being served with a citation and that if the applicant had any objections to the mode of distribution he should have raised the same before the grant was confirmed.
13. She deposed that the application had no merits, is frivolous and vexatious and calculated to frustrate the other dependent's effort put in the matter towards the issuance of the certificate of confirmation of grant.

Hearing

Pw1 Joel Kabiu Njogu

He testified that he was a pastor with New Apostolic Church in Ndithini within Mwala Sub County. He filed an application dated 8-8-2013 and an affidavit in support. He wished to rely on the contents of the said affidavit plus the annexures. OB EXH 1-6; documents annexed to the objector's affidavit sworn on 8-8-2013.

He was the fifth born child of the deceased who was his father. His name was listed on the chief's letter showing him as one of the children of the deceased. He confirmed having been cited by the petitioners herein. He was then sick when he received the notice but entered appearance through counsel but did not participate in any further proceedings. Later he learnt from the area chief that the petitioners herein had obtained grant of letters and then took the whole land namely Machakos/Ndithini Phase/2/209 which belonged to his late father.

It was registered in name of two petitioners to be shared jointly between them. His father had two wives, his mother is the first wife and children include himself, Janet Wanjiku Njogu, Ann Muthoni Njogu, Mary Njoki, Warenga Njogu. His mother is Gladys Wanjiku Njogu.

The second house comprised of Mary Nduta Njogu who had no children of her own. The allegation that the second wife married another woman is false since his father had already passed on. The alleged children of the woman married do not belong to the deceased. They had agreed in a family meeting held in 1993 that he was to get 3.5 acres while the second wife gets 1.5 acres of land. The court should now intervene in the matter. The parcel Machakos/Nduthini phase 2/208 was allocated to him by the government and did not belong to his father. The same is not even indicated on the confirmed certificate of grant. He wants to inherit his father's property.

On Cross examination by Mr Njoroge he stated that 2<sup>nd</sup> petitioner was not a wife of his late father. both petitioners resided on the family land. The second petitioner was only brought by his step mother as a worker but not a wife. The meeting which took place on 23-1-1993 was witnessed by the elders.



He did not file responses to the citation but later learnt that the matter had proceeded. He was not sure if he filed for letters of grant since I was then six. He was allocated the land by the government a long time ago at the same time like my father. He was registered as the owner of the land in 2006. both parcels border on each other. The chief's letter dated 24-7-2013 lists the family members. His sisters are not interested in the estate as they are all married. The land was to be shared between Him and 1<sup>st</sup> petitioner. He confirmed that his name is indicated on the petition forms. He was not present during the confirmation of grant. He only came to know when surveyors stormed the land and sub divided it.

On Reexamination he stated that the 2<sup>nd</sup> petitioner was brought by 1<sup>st</sup> petitioner after the death of his father. He was not aware of any marriage ceremony between the petitioners herein it is not possible for one to get two shares of land within the settlement scheme. He had seen the list of names on the deliberations by the chief dated 23-1-1993 in which land 1<sup>st</sup> petitioner duly signed it. The parcel 209 belonged to his father and he still had the title deed. Parcel 208 belongs to him and not any other person. None of his siblings including him have been catered for in my estate. His sisters are ready to come to court if required. It is the 2<sup>nd</sup> petitioner who was currently using the land. He had been barred from entering parcel 209 to harvest his fruits.

DW1 Pauline Wanjiku njogu testified that she was in court because of the shamba. She wished to adopt her witness statement as her evidence. The shamba belonged to Daniel Njogu(deceased). she knows Mary Nduta who is her co wife. They got the grant and was confirmed on 29/1/2013. That Machakos/ Ndithini/II/209 in half share. Mary Nduta who is deceased. she further testified that she went to the land in 1983 and the deceased married her in 1992 through kikuyu customary law. He paid brideprice in 1986. Joel, Naomi Wanjiru and Mary Nduta were present. Her family members brothers and mother were all invited. Joel knows that he was disinherited of the land that belonged to his father. He has his land and they have theirs. His mother was given land. The land Machakos/Ndithini/II/208 was for joel and theirs was Machakos/Ndithini/209. Joel's mother died and she did not find her. The deceased married her and paid for her dowry. She did not have any woman to woman relationship with Mary Nduta. They followed the due process. The deceased had 3 wives and 11 children.

On cross examination she stated that they gave Joel the citation and he refused to file succession cause 219/2011.they then filed and joel and the 1<sup>st</sup> home were not there when the confirmation of grant on 29/1/2013 before judge Kimaru. Joel refused to go to court. There was the chief's letter. 1<sup>st</sup> house Gladys wanjiru Njogu, Joel and Mary. 2<sup>nd</sup> house Mary Nduta Njogu the 2<sup>nd</sup> wife, John Gitau, Ruth Kamande, Simon, Mary Wanjiru, Bernard Ndungu 3<sup>rd</sup> House Pauline Wanjiru/ respondent.. woman to woman relationship .had 6 children.

They did not sign anywhere that they agreed to the distribution of the estate of the deceased. Mary Nduta the 2<sup>nd</sup> wife did not bear children. The shamba Machakos / Ndithini/II/208 is in the name of Joel. She had not presented any evidence that she was married to the deceased. her parents who could confirm that she was married to the deceased also died. Joel and others were there and could confirm. She went to the land in 1986.

In reexamination she stated that the children of the 1<sup>st</sup> home were not included except Joel. They did the wedding and Joel was there and he did not confirm to the court. The other parties that were there in her dowry payment were present in court.

DW2 Francis Njaramba Njogu testified that he was in court in regards to the Estate of Daniel Njogu. He was a neighbor and have lived many years. Mzee Njogu had 2 wives. He gave the 2 wives wanjiru and Nduta the shamba. He did not have ID card.



All the 3 wives lived together in the shamba. When the deceased was old he had two wives. After the demise of the father Joel told the two wives to move to another shamba and left Joel's shamba which was registered from his mother.

Cross examination he stated that he knows of Joel Njogu who is the child of the deceased and 1<sup>st</sup> wife Gladys Njogu had 5 children. Mary Nduta had no children and Pauline Wanjiru had 6 children. Machakos/Ndithini/208 was in the name of Joel and Machakos/Ndithini/209 was in the name of the deceased. He did not know if Joel planted Mango trees. Mary and Pauline filed succession cause without involving Joel.

On re examination he stated that he explained about the shamba Machakos 208 is registered in the name of Joel Njogu as the deceased and the 1<sup>st</sup> wife had no ID cards. The deceased was registered on behalf of Nduta who brought Pauline Wanjiru Njogu. When they filed the succession cause they did not include shamba of Joel Njogu.

DW3 Bernard Ndungu testified that the deceased Daniel Njogu married his sister Pauline Wanjiru. He was left when the deceased died and Pauline Wanjiru is the first of their siblings.

On cross examination he stated that in 1983 Daniel Njogu married Pauline Wanjiru and he was paid dowry. He did not know if Francis Njaramba was the son of Njogu or not. He is a neighbor. Pauline fell in love with the deceased Njogu. His father received dowry from the deceased in his statement he had attached the marriage rights.

On reexamination he stated that Pauline was his elder sister. In his statement he stated that visitors came to his home. He does not know everybody called Njogu as it was a common name in Kikuyu community. He did not know any other Njogu other than the one who married his sister. PW4

14. The matter was canvassed by written submissions

## **Submissions**

### **The Applicant's Written Submissions**

15. The Applicant in his submissions dated 23<sup>rd</sup> October, 2024 wherein counsel for the Applicant submitted that the applicant is a bonafide beneficiary of the estate of the deceased being his son and that the court was misled to issue and confirm the grant leaving out the applicant and his entire house and that the letter from the Ndithini chief should be relied upon showing the deceased only had two wives. That the 2<sup>nd</sup> respondent was in a woman to woman marriage with the 2<sup>nd</sup> wife Mary Nduta who did not bear any children.
16. Counsel submitted that the applicant and his entire family had been unlawfully denied access to their entitlement in the suit land being branded as trespassers with the respondents claiming ownership of the entire deceased estate to their exclusion
17. It was submitted that the 1<sup>st</sup> house neither consented to the grant nor petitioned to the confirmation and distribution of the estate and have been left out in the distribution thus disinherited. The grant was obtained fraudulently via concealment of material facts and misleading the court that the 2<sup>nd</sup> respondent was a wife to the deceased. It was finally submitted that the grant was ripe for revocation

### **Respondent's Submissions**

18. Respondent in his submissions dated 22<sup>nd</sup> October, 2024, wherein counsel for the Respondent submitted that the evidence in court was that the deceased Daniel Njogu married Pauline Wanjiru



and had 6 children. Reliance was placed on section 29 of the Law of Succession Act which provides for dependency and the case of Estate of Muhkobi Namonya deceased and Estate of Magangi Obuki(deceased)

19. It was the position of the Respondent that there was full disclosure of the beneficiaries of the deceased and that the respondents only petitioned for the land registered in the name of the deceased and upon which the widows resided. 20. The applicant continues to live in the land Machakos/Ndithini/208 registered in his favour thus he was neither disinherited nor did they conceal him being the son of the deceased
21. The court was urged to find and declare that the summons for revocation dated 8.8.2013 lacked merit and the same be dismissed with cost to the respondent

### **Determination/analysis**

22. The Court considered the pleadings and submissions filed by parties through learned Counsel and the issue that emerge for determination is;

### **Whether the grant issued on 18<sup>th</sup> April 2012 and confirmed on 29<sup>th</sup> January 2013 should be revoked or not?**

23. On the issue of whether the Grant issued on 18/4/2012 and confirmed on 29/1/2013 should be revoked:

The Summons is premised on Section 76 of the Law of Succession Act, Cap 160, Laws of Kenya provides;

“

“76. Revocation or annulment of grant

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- (a) that the proceedings to obtain the grant were defective in substance;
- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—
  - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
  - (ii) to proceed diligently with the administration of the estate; or
  - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or



(e) that the grant has become useless and inoperative through subsequent circumstances.”

24. That section provides that a grant of representation may at any time be revoked or annulled as long as the court is satisfied that the facts contemplated under the said section are proved.

25. In deciding whether or not to revoke grants, it was the position In re Estate of Mukhobi Namonya (Deceased) [2020] eKLR that;

“under section 76 of the Act, a grant of representation is liable to revocation on three general grounds. The first ground would be where the process of obtaining the grant was attended by glaring difficulties, such as where the same was defective, say because the person who obtained representation was not qualified to be appointed as personal representative, or the procedural requirements were not met for some reason or other. It could also be because the petitioner used fraud or misrepresentation or concealed important information in order to obtain the grant. The second general ground is where the grant is obtained procedurally, but the administrator subsequently runs into difficulties during the process of administration of the estate. Such difficulties include his failure or omission to apply for confirmation of his grant within the period allowed in law, or where he fails to exercise diligence in administration of the estate, such as where he omits to collect or get in an asset, or where he fails to render accounts as and when he is required to do so by the law. The third general ground is where the grant has become inoperative or useless on account of subsequent circumstances, such as where the sole administrator died or loses the soundness of his mind or is adjudged bankrupt.

26. The applicant herein deposed that the grant of letters of administration intestate of the estate of Daniel Njogu made to Mary Nduta Njogu and Pauline Njogu was obtained fraudulently by means of concealment by making of untrue allegation

27. It was his position that Pauline Wanjiku has never been a widow to Daniel Njogu and was brought by Mary Nduta Njogu as her wife under traditional practice in 1992 and that him and his sisters had been disinherited.

28. The question which then arises is whether the 2<sup>nd</sup> respondent was a wife to the deceased hence entitled to a share of the estate of the deceased or not?

29. During hearing, the 2<sup>nd</sup> respondent testified that the deceased married her in 1992 through kikuyu customary law. He paid brideprice in 1986. Joel, Naomi Wanjiru and Mary Nduta were present. Her family members brothers and mother were all invited.

30. The applicant alleged that Mary Nduta was the one who brought the 2<sup>nd</sup> Respondent through a woman to woman marriage and from the testimonies this seems to come out clearly that the 1<sup>st</sup> respondent was unable to bear children and brought in the 2<sup>nd</sup> respondent with her 6 children

31. It is trite law that whoever alleges must prove. Section 107 (1) of the *Evidence Act*, Cap 80 Laws of Kenya provides that:

“Burden of proof

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.



(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

68. Sections 109 and 112 of the same Act provides:

109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of the fact shall lie on any particular person.

112. In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving the fact is upon him

32. The evidence on record confirms as follows;

- a) The Petition for letters of administration filed on 7/12/2011 listed the family of the deceased as comprised of 2 widows of the deceased and 11 children of the deceased. Interestingly and curiously, the Respondents put all children together and failed to disclose that the 1<sup>st</sup> 5 children were of Gladys Wanjiku 1<sup>st</sup> wife [deceased] of the deceased. Also, no disclosure was made that Mary Nduta Njogu had no children and that Pauline Wanjiku Njogu had 6 children [whether she was married to deceased and/or children were deceased's is hotly contested]

There was no Consent to Making Grant of Letters of Administration intestate signed by members of the Deceased's family, at least those who agreed.

During Summons for Confirmation of Grant proceedings, despite outlining 2 widows and 11 children, the property available for distribution Machakos Ndithini Phase 11/209 was divided into 2 equal shares between Mary Nduta Njogu conceded as step mother to Applicant and Pauline Wanjiku Njogu whose marriage to deceased was/is contested and paternity of her children is in question. The mode of distribution was not with oral/written consents of beneficiaries save for children of Pauline Wanjiku Njogu. Secondly, Citation was filed against the Applicant was not pursued instead Petition was filed

The evidence on record disclosed the following;

- a. There are 2 Letters from the same Chief on different dates with different information;
- b. 1<sup>st</sup> Chief's letter dated 9/8/2011 and filed on 7/12/2011, by Chief of Ndithini one Makau Mwangangi where 1<sup>st</sup> wife Gladys Wanjiku Njogu (dcd) listed her 5 children including the Applicant; 2<sup>nd</sup> Wife Mary Nduta – No Child and 3<sup>rd</sup> Wife Pauline Wanjiku Njogu & 6 children
- c. 2<sup>nd</sup> Chief's letter attached to Applicant's Application is dated 24/7/2013 which outlines the family of deceased as follows; Gladys Wanjiru Njogu – wife (deceased) & 5 children, the Applicant herein being one of them; Mary Nduta Njogu 2<sup>nd</sup> wife; no children but married another lady with 6 children by name Pauline Wanjiku Karanja as a concubine with 6 children. Again, by Chief of Ndithini Makau Mwangangi. So which letter reflects the true family of the deceased?

33. During the hearing, PW2 Francia Njaramba Njogu testified that as neighbor of the deceased he knew of the deceased's 2 wives the Respondents herein and that the property Machakos/Ndithini/209 in the name of the deceased was for the Respondents as the Applicant s/o 1<sup>st</sup> wife of deceased was registered in his name as his mother had no ID. This Court found his testimony contradictory and inconsistent and



- found him a couched witness. If deceased died in 1992 at the age of 74 years and PW2 as at 2024 when he testified he was born in 1963 and was 61 years and as at 1992 he was 31 years where would get such intricate details of what the deceased did to and with his family and he was alleged to be a neighbor?
34. During the hearing, Bernard Ndungu Gitau , brother to Pauline Wanjiku Njogu testified that the deceased Daniel Njogu Macharia married the 2<sup>nd</sup> Respondent under customary law and in 1983 his father received dowry from the deceased. He produced a list of bride price items attached to the Statement of Bernard Ndungu Gitau and dated 7/11/2021 yet in the statement and his testimony, he referred to 1983 as the date that he was present and took minutes. During cross -examination DW3 produced his ID card and it indicated that he was born in 1965 by 1983, he had finished Standard 7 and was aged 18 years old. The date of 2021 instead of 1983 when allegedly bride price was paid for Pauline Wanjiku Njogu and DW3 was only 18 years and was the one taking Minutes of what was paid as bride price is far fetched and not reasonable in the circumstances. Afterall as brother to Respondent he would naturally protect his sister.
  35. From evidence on record Pauline Wanjiku Njogu was not married to the deceased and the deceased certainly could not have sired 6 children of the 2<sup>nd</sup> Respondent within that short period, 1983- 1992 and they grew up to be married by 2011. It is not logical at all. The Court totally dis regards evidence of the Respondents as reasoned above,
  36. It was admitted by the 2<sup>nd</sup> respondent that they did not involve the siblings of the applicant and yet there are beneficiaries and thus are entitled to a share of the deceased estate which is the property Machakos/ Ndithini/209.
  37. I agree that the applicant had discharged the burden of proof through evidence that indeed the 2nd respondent was not a wife of the deceased. The Applicant rightfully refused to consent to making of grant of letters of administration intestate and summons for confirmation of grant as his late mother Gladys Wanjiku Njogu (dcd) was not mentioned, include or acknowledged.
  38. The process of obtaining the grant and confirming the grant especially with regard to distribution of deceased's estate was tainted by defects of improprieties, mis- representation and concealment of material facts that is the actual family of the deceased, by conjuring up facts that are not backed by tangible evidence.
  39. The parties misled the Court as to the wives/widows of the deceased and biological children of the deceased and that the family consented to mode of distribution of deceased's estate. The ground for revoking the grant and confirmation of grant due to concealment and material non -disclosure is proved by the Applicant. See Estate of Mwaura Mutungi alias Mwaura Gichigo Mbura alias Mwaura Mbura NBI Succession Cause 935 of 2003 Estate of NgaiiGatunbi alias James Ngaii Gatumbi (Deceased) NBI 793 of 1993.
  40. Whereas having a woman to woman marriage is not prohibited by law, and that is most likely what happened between the 2<sup>nd</sup> wife /widow Mary Nduta Njogu and Pauline Wanjiku Nduta, as the deceased had children with 1<sup>st</sup> wife Gladys Wanjiku Njogu, mother to the Applicant after deceased's death, they are entitled to Mary Nduta Njogu's share only and not all of the suit propertyMachakos/ Ndithini/209 and the Applicant , if his sisters are not included, the portion he planted mango trees and built a home as he already occupies Machakos/Ndithini/208.

#### Disposition

1. The application for revocation/annulment of grant is granted and upheld.
2. The grant of 18/4/2012 confirmed on 29/1/2023 is hereby revoked



3. All the beneficiaries including the siblings of the Applicant are entitled to a share of the Estate of the deceased in this case the property Machakos/Ndithini/209
4. The 2<sup>nd</sup> Respondent Pauline Wanjiku Njogu is not wife to deceased and her 6 children are not children of Deceased and are only entitled to Mary Nduta Njogu 2<sup>nd</sup> wife/widow of deceased's share of the estate of the deceased.

It is so ordered.

**JUDGMENT DELIVERED SIGNED & DATED IN OPEN COURT IN MACHAKOS HIGH COURT ON 17/2/2025**

**M.W.MUIGAI**

**JUDGE**

