



**In re Estate of Njiema Muthirwa alias Njiema Muthirua (Deceased) (Miscellaneous Succession Cause 17 of 2018) [2024] KEHC 8526 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8526 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
MISCELLANEOUS SUCCESSION CAUSE 17 OF 2018**

**LW GITARI, J**

**JULY 4, 2024**

**BETWEEN**

**MARTIN MUTWIRI NJIEMA ..... 1<sup>ST</sup> APPLICANT**

**BENSON KINYUA MBAKA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**HENRY GITONGA NJIEMA ..... 1<sup>ST</sup> ADMINISTRATOR**

**ANISETA KABURU ..... 2<sup>ND</sup> ADMINISTRATOR**

**RULING**

1. This matter relates to the estate of Njiema Mwithirwa alias Njiema Mwithiru (deceased). The matter pending determination before this court is a summons for revocation and/or annulment of the grant issued to the respondents on 5/3/2020 on the ground that the grant was obtained fraudulently and procedurally (sic) as the proceedings to obtain the grant issued to the respondents on 5/3/2020 on the ground that the grant was obtained fraudulently and procedurally (sic) as the proceedings to obtain the grant were defective in substance.
2. The application was opposed by the respondents who are the administrators and filed a replying affidavit sworn by Henry Gitonga Njiema. The summons was heard by way of 'viva voce' evidence and was at the stage of the ruling.
3. On record is a summons dated 6/5/2024 which was filed under a certificate of urgency. The gist of the application is that the court grants leave to the applicants Martin Mutwiri Njiema and Benson Kinyua leave to re-open the case limited to the production of new material evidence being the limited Grant of Letter of administration for the estate of the late Lucyline Ciamati daughter of the deceased herein issued on 16/6/2024. No reply has been filed to this summons. When the matter came to confirm he filing of the submission, the Counsel for the applicants applied to have this summons heard before the court can give its final ruling in the pending application.



4. Although the court directed that it will give the ruling which was pending I find that it is in the interests of justice the later summons be heard first so that the court can hear determine the matter conclusively. Rule 73 of the *Probate and Administration Rules* provides that nothing in the rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent the abuse of court process. Since the application has been filed and it seeks to file additional evidence it is in the interest of justice that it be heard first before the ruling in the summons for revocation of grant is determined. For this reason I direct that the response to the application be filed and served within seven days. The mater shall then be mentioned to confirm filing and for directions.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 4<sup>TH</sup> DAY OF JULY 2024.**

**L.W. GITARI**

**JUDGE**

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