



In re Estate of M'Mwaria Nkongoro (Deceased) (Succession Cause 128 of 2015) [2023] KEHC 18649 (KLR) (16 February 2023) (Ruling)

Neutral citation: [2023] KEHC 18649 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 128 OF 2015
EM MURIITHI, J
FEBRUARY 16, 2023**

BETWEEN

TABITHA MUTHONI MUTHUNGU APPLICANT

AND

GACII KANYORO IGINGA RESPONDENT

RULING

1. By Summons under certificate of urgency dated October 19, 2020 under section 76 of the [Law of Succession Act](#), Rule 44 of the *Probate and Administration Rules*, the applicant seeks:
 1. Spent
 2. Spent
 3. That the Honorable court be pleased to issue an inhibition against any registration in land parcel number SOUTH THARAKA/TUNYAI 'A'/194 pending the hearing and determination of prayers 4 and 5 here below.
 4. That the Honorable court be pleased to order the status quo as relates to the occupation of land parcel number SOUTH THARAKA/TUNYAI 'A'/194 be maintained pending the hearing and determination of prayer 5 here below.
 5. That the GRANT OF LETTERS OF ADMINISTRATION of MERU HC SUCCESSION CAUSE NO 128 OF 2015 issued on June 10, 2015 and confirmed on July 10, 2018 be revoked and annulled on the grounds that the same were defective in substance and that the grant was obtained fraudulently by making of false statement or by the concealment from the court something material to the case of the applicant herein.



6. That cost of this application be provided for.
2. The application is premised on the grounds on the face of it and supporting affidavit of the applicant sworn on even date. She avers that she and the respondent are a daughter and the 1st wife to the deceased, respectively. The deceased was also married to 2 other wives namely Mukwamugao Muthungu and Juliah Kanyamu Muthungu. When the respondent was filing this cause, she failed to disclose that the deceased had 3 houses comprising of Gacii Kanyoro Iginga - wife (respondent), Kaugwa - daughter (deceased), Mukwamugao Muthungu - wife (deceased), Doricah Kambura Mucee - daughter, Joyce Kathambi Muthungu - daughter, Juliah Kanyamu Muthungu - wife, Tabitha Muthoni Muthungu – daughter (applicant). At the time of his death, the deceased had been separated from the respondent for more than 40 years. The respondent secretly filed this cause without her consent and/or knowledge and neither were her step sisters informed. The respondent intentionally listed herself in the chief’s letter as the only beneficiary. The respondent, instead of disclosing to the court that the deceased was also survived by herself and her sisters, went ahead to distribute the estate to strangers. She only learnt that SOUTH THARAKA/TUNYAI 'A'/194 (henceforth called the estate property) had been transmitted to the respondent when the strangers listed in the certificate of confirmation of grant invaded it and attempted to evict them, using force but a report was made at Kithino Police Post vide OB 9/20/09/2020. Since then, the respondent and other alleged beneficiaries have been engaging in acts of wanton wastage and destruction on the estate property by cutting down trees and burning charcoal, without her consent and that of her sisters. She prays for the grant to be revoked so that it can be properly distributed and the respondent will suffer no prejudice if the application is allowed.
3. The respondent opposed the application vide her replying affidavit sworn on February 8, 2021. She contends she was the deceased 1st wife and they were blessed with 5 children namely Kaugwa (deceased), John Muthungu, Ester Kathure Muthungu, Priscila Mati Muthungu and Grace Kamene Muthungu. She avers that the deceased had prior to his death bequeathed Parcel No 1861 to Joyce Kathambi, Plot No 36 at Chiakariga to Doricah Kambura Mucee and Plot No 37 to the applicant. She was given the estate property with her 4 children, because she has been living there and has extensively developed it to the exclusion of others. When her step-daughters had adamantly refused to appear before the chief even after been severally summoned, she was issued with a chief’s letter listing her as the only beneficiary of the deceased. She did not see the need of including the properties at Chiakariga as the respective beneficiaries had failed to co-operate in having the cause filed. She gave her 2 daughters, Priscila Mati and Grace Kamene, who are both married 1 acre each, 6 acres to John Muthungu as he has several children and has been farming on the estate property for many decades, 5 acres to Ester who is a single mother, 2 acres to Japhet Mucee, her adopted son who takes care of her and left a balance of 5.75 acres in her name just in case any of her step children would need to live with their step-siblings. She is not aware of any occasion when the applicant or her siblings were chased away from the estate property and pray for the court to dismiss the application with costs so that the implementation of the grant can be finalized.
4. The applicant swore a supplementary affidavit on October 27, 2021 contending that Plot Nos. 36 and 37 were acquired by the deceased way after he had separated with the respondent. The respondent did not utilize the estate property during the lifetime of the deceased, and only forced her way onto the land after his death and attempted to evict them. The deceased never owned LR 1861 as alleged by the respondent, as that land was given to her late step sister Joyce Kathambi by the clan. Contrary to the averments by the respondent, the deceased died intestate without a will distributing his estate. She duly honoured the summons to appear before the chief, therefore it cannot be said that she refused to co-operate, and the refusal by the respondent to notify and/or include them in these proceedings was intended to deny them of their share of their father’s estate.



5. John Muthungu, Esther Kathure Muthungu, Prisilar Mati Muthungu and Chabari Gituoki Rigau swore affidavits on August 9, 2021 in opposition to the application.

Evidence

6. RW1 Gacii M’Kanyoro Iganga adopted her witness statement dated February 8, 2021 as her evidence in chief. She went on to state that, ‘...I come from Giakariga, Sub-location Tharaka. I lived with my husband. I now live at Miitigimi, Tunyai, Before I came to Mithigani. I stayed at Ciakariga. I testified that my husband had enquired three plots No 36, 37 Ciakariga and another. I had taken documents to my Advocate. They are on plot Ciakariga 36, 37. I wish to produce these before the court.
 1. Letter for Tharaka Nithi County Government of October 7, 2020 confirming that plots 36 and 37 belong to Muthungu Nkongoro.
 2. Letter for Adjudication and Settlement Officer on parcel no Ciakariga Adjudication Section 1861.
 3. Summons for the Chief Ntonyai location dated September 26, 2013. The summons addresses to (1) Joyce Kathambi Muthungu of September 26, 2013; Mati Kiure September 13, 2013 and John Muthungu of September 13, 2013.’
7. On cross examination, she stated that, “The deceased was my husband. I was his only wife. He built for me a shop. [Did you disagree at time regarding will to deceased] I did not separate with him, we lived together until his death. Tabitha Muthoni Mukungu? I know the person. She is a good person. He mother was my Co-wife. [Muirwa]. Tabitha’s mother was Julia Kanyamu Muthungu. Julia is deceased. My husband had another wife. We were three co-wives. The third wife was called Mukwamogao. Mukwamugao is the mother of Kalua. I had 6 children with the deceased husband. Was there any children out of your marriage? No. Julia Kanyamu, deceased mother of applicant Tabitha had 2 children. Tabitha and Mainda. Both are alive today. Mukwamogai’s house she is deceased. She also had children with the deceased. Kabura, and another I can’t recall. Two children. I went to the Chief’s office. I got a letter which I brought to court. Did the Chief asks how many children the deceased had? He did not ask me as he know all of them. Letter of chief –it’s does not mention the 2 co-wives and their children? He did not write. I had told him everything. But he did not write. It is the chief who failed to write. I told him everything. You know it was a mistake that the Chief only wrote you as the beneficiary of the deceased. The land is mine alone. Every Co-wife has her own land and property. They went to take only there owing. Application for confirmation? Did you include the co-wives and their children either to take their share or agree to you keeping the property as they had their own share? I did not write down as each of them have their property. I know that they did not give their consent to the distribution. None of them signed. Japheth see Nyaga -2 acres, Adopted son. Japheth is a child of the home. He had been employed by my husband at the home. He was not to be given to inherit but only supervise the land. The estate had land. I have not distributed the land. [Paragraph 24 of Affidavit that the remaining land is 5.75 acres after distributing to the heir left for witness for step children. Who are the step children?] Not all of them. I only know of Tabitha, the applicant. She is only one who has not caused disagreement with me. Tabitha and Kambura have not caused any disruptions with me. Have you failed to provide for the others because they cause you trouble? Yes because they do not recognize me as their mother. They insult me and threaten to kill me. They want to sell the land and drink the proceeds. Tabitha lives in town how? She lives at Ciakariga, where my deceased husband built for me. Do you know that the property belongs only the deceased? I know it is the property of my husband. It is not my property. I cannot provide for them as their mothers have been given land. If they have failed to cultivate their shamba, they can’t take my share. The documents are set out at paragraph 15. You did



not include 1861, 36 and 37 in the list of assets it is true that I only indicated Tunyai and Nithi Tharaka parcel. Summons (Ex 4 (a) –(c). The summons are not signed that they were received by the person summoned. I did not check to see whether they signed. There is no summons of Tabitha the applicant Tabitha Muthoni Muthungu. I did not know that she was not summoned. Exhibit No 2 Adjudication Officer of October 7, 2020. It was obtained when the case was pending. It is true. Summons to the said John Muthungu, Esther Kathure, and Mati Kiaambi of September 13, 2013. It is true it did not indicate the reason for the summons.”

8. On re-examination, she stated that, 'Julia Kanyuru that 2 children one of the children was born out of wedlock. She then got one when she married. Tabitha is the one she got when she married my deceased husband. She is a good person. Chiefs' letter. The Chief wrote the letter. He had called the people earlier in another case and they had refused to come. Consent of the beneficiaries? When we disagreed they refused to come, even the Chief called then and they refused. Why did you not include the other shamba? The children of the co-wives were called to meeting at the Chief's office and they left. How could I include other person while each had their shamba. Each of the co-wives had their property and they could share for their children.'
9. AW1 Tabitha Muthoni Muthungu, testified that, '...I reside at Embu and I alternate at Ciakariga. I know Gacii Kanyoro. She is the wife of my deceased father. The deceased had Gacii is a first wife. He had two other wives. They are 2nd wife Mwokwamuga, and Julia Kanyamu Muthinga who is deceased, and was my mother. The 2nd wife Mukwamuga is also deceased. The 3 house had children of the deceased the 1st wife had children with the deceased as follows:- Kauguwa Muthanga - He is the only one I know of 1st house of Gacii. He is deceased. He died about 1950s. N the 2nd house, there was Mwakwamuga Muthinga who had 2 children:- Dorcas Kambura Muthinja Joyce Kathambi Muthinji Joyce if deceased. She left children who are adults. They are James Mwititi, Dorcas Makena, Kariuki Patrick, Robert Mutwiri and two others who are deceased. I signed two Affidavits Supporting Affidavit of October 19, 2020 and April 5, 2021. [Court allows reference to his Affidavit of April 5, 2021 as the matter is now proceeding on the basis of other evidence. I pray that the affidavit be adopted as my evidence.'
10. On cross examination, she stated that, “My father had three wives. My mother was the 3rd wife. I was born in 1961. Petitioner Gacii the first wife. She was married in 1950s. We were told there was a first wife. I did not find her at Ciakariga. I got to know about Gacii for our father. The children of Gacii. I was told by my father about the children. We have not done any DNA testing to confirm their parental. It was our father who said that. My father told me several times. I do not recall when he told us. He used to tell us about this several times. It was many times. Dorcas Kambura and other. They are not in court as Dorcas is unwell. The other is deceased. Kambura has never come to court. She has not filed any documents. I signed on their behalf. I do not have authority to sign on behalf. I do not have any document. I live with the two children of my sisters. The process of the case. The children have not given me any authority to sign documents. I was born in Ciakariga. Plot 36 and 27 Ciakariga. I was brought up on the plots. Plot A 134 Tharaka. Gacii did not live there. We are the ones who cultivated there when we were small. I do not know where she lived at the time. I know that Gacii has testified before the court. She lied. [2013 before the petitioner has filed summons before the Chief]. I only know of one summons and when I went the Chief did not tell me why he had called me. I confirm I went to the Chief. [Replying Affidavit by Petitioner dated February 8, 2021 and marked as GK 1 3].'
11. On re-examination, she stated that, 'I was born in 1961. Gacii had been married in 1950s. I never saw Gacii live with the deceased as I grew up. Deceased and Gacii had one child. It was my father who told me this. The children of the two houses have not come to court why? They were not refused to come to court. Do you have authority. I am giving evidence on behalf of the others. Plot A 194. I know



- the parcel of land. Gacii has never lived there in my life since 1961. It was Joyce and Tabitha and our father who used to cultivate on the plot A194. Chief summons. The summons were to me alone. It was not summons to the others in the two houses. The other children in the 2nd and 3rd houses were not summoned. I have not seen any summons. I was in court when Gacii testified. She agreed that there were other children in the family. Letter by the Chief. It does not show the children.'
12. RW2 Chabari Gichoki Ndigau testified that, '...I know the deceased, we came from the same place. There is only two parcels of land between his land and mine. The parcel number 194. I have lived on the shamba since 1968. The deceased had lived on the land from 1969. It is his the wife the deceased who lives. The wife of the deceased is called Gacii. I have made an affidavit. I confirm that I signed the affidavit. I pray that it be adapted as the evidence before the court.'
 13. On cross examination, he stated that, 'I was born in 1934 and I and in the 80's. The deceased and 71. It is the deceased who is older than me. He was much older than me. The parcel of land on which I live is only two parcel away from the deceased's land. The two parcels belong to one M'Thingutha and Ndunga. I live on the land. It is No 18. The deceased's land is 194. I know it well. I do not know the acreage for parcel No 194 belonging to deceased. I only know the acreage they had. [Paragraph 6 of Affidavit]. Gacii was the wife of the deceased. Is it true and Gacii had separated from the deceased and went away and later came back? I do not know about that. The deceased was you friend? Yes, I am the one who measured boundary of the land from him. But I do not know the acreage. Do you know the land is registered in the name of the deceased? Yes, I do know that the land is in the name of deceased. I know the accused's family. Do you know he had three wives? I only knew of two. Gacii anf Kanyamu. I do not know whether he had another wife. We came from Ciakariga and settled to Tunyai. That is why I do not know whether he had a 3rd wife. Do you know that the deceased had children with Kanyamu. I heard she is dead. I do not that Kanyamu and the deceased had children. They were not on the shamba for me to see them. [Paragraph 10 of Affidavit]. A 194 set aside for Gacii and children and that he had other property set aside from his two wives. I was told that there were parcel of land. So you know there are two other wives? I did not know. Do you know the applicant who testified in this case? I have never seen her before. I do not know whether she is a child of the deceased. Do you know where deceased was buried? He was buried on her shamba A194. I do not know about the deceased's two wives. [Paragraph 10 of Affidavit]. That the other two wives were given other property elsewhere. Can you name them? I do not know the property given to the other wives.'
 14. RW3 Esther Kathure Muthinja testified that, '...The deceased is my father. I swore an affidavit sworn on August 9, 2021. I do not have anything to add to the affidavit. I pray that the Affidavit be adapted as my evidence.
 15. On cross examination, she stated that, 'I am a daughter of the deceased. Gacii is my mother. I was born in 1968. I am the 4th child of the Respondent. I know mzee Chabari. From the parcel of land to my father's land is a short distant. It could take 30 minutes to get from Mzee Chabari to the deceased's land. [Paragraph 3 of Affidavit]. Tabitha Muthungu is my sister. She is not of the same mother us I. Her mother was Julia Kanyamu Muthungu. She sired by my father but not my mother. [Paragraph 4 of Affidavit]. Deceased had two other wives. The other two are in addition to Gacii my mother. Tabitha mother was the 3rd wife of my father. Tabitha is the only child of my father and her mother. I know she was a brother from another father. He is called Mainda but not by our father. I have not said that in the Affidavit filed in court. The 2nd wife and deceased had three children with our father. Dorcas Kambura uthinja and Joyce Kathambi Muthinja, only one is alive. Dorcas is alive. Joyce Kathambi is dead. Joyce left behind children. They were seven children and three of them are deceased. We went to chief with my mother. It myself Esther, Priscilla Mati Muthungu, my sister and my brother John Muthinja together with our mother. We had called also people from the other houses but they did



no come. Do you know whether the Chief was summoned by the Chief and she went? I do not. Did you tell the Chief that there were children from the other house? We gave the Chief the names of the children. We told him that there were other children. The Chief did not record the names in the letter. They did not come. [Paragraph 5 of the Affidavit]. Do you have a birth certificate? I heard my Id. I did not put anything to show that I am a child of the deceased. [Paragraph 14 of Affidavit]. Adoption of child called Nyaga Japhet. It is true? [Witness hesitates] my father did not adopt any child. It is my mother who took the man as her helper. Any adaption papers on Nyaga to the deceased or mother? [Witness does not answer] The parcel A194 what is the acreage? I do not know the acreage. It has not been measured. It has not been surveyed. I think it is 21 points. The land is in the name of the deceased. The land has been transferred into my mother's name as in the Chief's letter. [Paragraph 16 of Affidavit] That Tabitha is married and lives in Embu. I know her as my sister by the same father. I know she lives at Embu. [Paragraph 18 of Affidavit] 5.75 acres retained by Gacii and she is ready to share to the children of the other houses. Why is she not ready to share equally among the children. Because they have other shamba at Muganga. I have not put this fact in the Affidavit. It is only that plot that we know of which was left by the deceased. Do you know the petition did not include the Muganga property? We included it. The deceased was buried on A194. No other person has been buried on the parcel of land A194.'

16. On re-examination, she stated that, 'I do not have any expertise to measure land. I do not know the acreage. Mainda brother to Tabitha's we did not include him because he has never come to our home. Chief's letter. The person who were summoned did not come to the Chief's office other property not included. When the people did not come to the Chief. We could not include their property deprive them of the property. We only included what was ours.'
17. RW4 John Muthinja testified that, '...I know the case before the court. It relates to a shamba Mworia Nkonjero. He was my father. I made an affidavit on August 9, 2021. The signature on the affidavit is mine. I pray for the Affidavit to be adapted as y evidence before the court I have the original receipts of the copies attached to his Affidavit. I wish to produce them before the court. The receipts are eleven in number. They are marked as JM 1 in the Affidavit. RW Exhibit no 1 (a)-(k) receipts for payment of water on land.'
18. On cross examination, he stated that, 'I am 5th born of the deceased in the house of Gacii, the Petitioner. Paragraph 4 of Affidavit that applicant is step sister. It is true. Paragraph 5 of Affidavit. The father had other 2 wives who are deceased. It is true. My stepmother also had children. I know the children in Kanyamu's house the children are one (1) Tabitha, the applicant. Mukwarugambo had two children Joyce and Kambura. My mother went to the Chief for the letter before the petition. I went with my mother to the Chief. It was myself my sister's Matii, Grace Kamene and Gacii our mother. The other two houses were represented. There was Joyce Kinya, Tabitha, They came later after we had left. Were you there when you say they later came to the Chief's office? Did you see them sign any papers to show that they are also children of deceased? It was there but they did not want to respond to the questions for the Chief. [It is put to witness that he has not indicated in the Affidavit about the visit by other children to the Chief's office] I did not record the fact in the Affidavit. What I told the advocate is what is recorded in the Affidavit. I did not read the Affidavit before I signed. It is true that the children were summoned by the Chief. I have not attached the summons for the Chief. We could not get the letter at the time but we latter got the letter. We did not give the letter to our Advocate. [Paragraph 9, 10, & 11 Applicant lived on plot No 37 and the other wife's family on 36 and 1861] It is true that that is where they live. The shamba are still registered I the names of the deceased. Are you aware whether the Petitioner put the shamba I the petition? My mother forgot to include the properties. We did not tell the Chief but they are all property of the deceased. Did you tell the Chief that deceased had other families and children? The Chief knew the families. It was his responsibility. We did not tell him.



[Paragraph 16 of Affidavit] We are ready to divide the property with others for the other families. I do not object to the division of the property to all the families and children of the deceased. Receipts of water installed on the land plot 184. I am the one who installed water on the land. Installing water does not make you owner of the land? I installed the water during the life of the deceased. I do not have a problem.'

19. On re-examination, he stated that, 'Did you see the other children go to the office of the Chief? I saw her at the Chief office once. We went to the Chief four times. The Chief wrote a letter to them but they did not come.'
20. RW5 Priscilla Mati testified that, '...I am aware of the proceeding, It relates to our father's succession. Court notes that witness was present in court when. PW4 testified.'
21. On cross examination, she stated that, 'Paragraph 2 Affidavit. I and the 2nd child of the house of Gacii. [It is put that the witness was not sired by the deceased] I do not have a birth certificate. I did not put any document to show that I was born by deceased. Applicant is my step mother. Deceased had 3 wives. Tabitha is a child of the 3rd house. The wife of 2nd house was Mukwamugambo. She is deceased. Tabitha's mother is also deceased. Tabitha's house has only Tabitha surviving. In the 2nd house live are two Joyce and Kambura. Plot A194 Are you aware of the plot of land? I do not know the acreage. The parcel of land belongs to my father. From Chabari Gichoki (RW3) is far. It is about one hour walking distance. Our mother has constructed on the plot and she lives there. Plot 37, 36 and 1061. They are at Ciakariga. It is also property of our father. They are large parcels. I do not know the size of the plots. We went to the Chief offices. It was my mother, myself, Esther Kathambi and John. The others were not there. The others never came to the office of the Chief. There is no evidence in the Affidavit that the others were summoned to the Chief's officer. Japhet Nyaga is a child of our mother. He is not born of my mother. He lives on the land helping our mother and buying medicine for her. When our father was alive Japhet was not being assisted by our mother. He came after the death of our father. When we went to the Chief we told him that our father had other family and children. I saw the letter for the Chief. The Chief did not record the names of the children of the families. I think the Chief should have recorded all the children of the deceased. Did you tell the Chief of plot 36, 37 and 1061? My mother told the Chief but I did not know whether she told about the other plots. She was upset.'
22. On re-examination, she stated that, 'Did you tell the Chief of other children of other house. The Chief called the child of the other house but they refused. We went there for two times but they refused to come.'

Submissions

23. The applicant faulted the respondent for failing to disclose to the court that some of the people to whom part of the estate property was given, like Japheth Mucee Nyaga, were strangers and not children of the deceased. She further faulted the respondent for failing to call the chief Tunyai Location to shed light on the allegation that the applicant and other children had refused to heed to the summons to appear. She urged that it was immaterial whether or not the said children were summoned by the chief, as the respondent was required by law to list all the children of the deceased. She urged that the respondent's blatant refusal to include all the children of the deceased and the properties were not only fraudulent but illegal and in bad faith. She urged the court to revoke the grant, as it was obtained fraudulently by concealment of some beneficiaries and some properties.
24. The respondent insisted that the deceased had different parcels of land where he had separately settled each of his 3 houses. She urged that she had offered a plausible reason why she left out land parcel No 1861 in Chiakariga Adjudication Section and Chiakariga Plot Nos 36 and 37. She submitted that the



applicant had an opportunity to participate in these cause but she deliberately refused, and urged the court to dismiss the application.

Analysis and Determination

25. The issues for determination are whether the grant should be revoked.
26. Section 76 of the *Law of Succession Act* sets out the requirements for revocation or annulment of grant as follows:- '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.'
27. The respondent admitted in her testimony that the applicant is a child by another wife to the deceased. She further admitted that she did not include her co-wives and their children in the proceedings for obtaining the grant. She also acknowledged that she was the only listed beneficiary in the chief's letter yet the deceased had other beneficiaries. She insisted that the estate property is hers and the other houses have their own land. She told the court that she did not provide for her other step children excluding the applicant and Kambura, because they did not recognize her as their mother. She accused them of insulting her, threatening to kill her and wanting to sell the estate property so that they could drink the proceeds thereon.

Verdict

28. The undisputed facts in this case are that the deceased had 3 wives namely Gacii Kanyoro Iginga (the respondent herein), Mukwamugao Muthungu (deceased) and Juliah Kanyamu Muthungu (deceased). He had a total of 4 children namely Kaugwa (deceased), Dorica Kambura Mucee, Joyce Kathambi Muthungu (deceased) and Tabitha Muthoni Muthungu. The respondent stated that she had other 4 children with the deceased namely Esther Kathure Muthinja, John Muthinja, Grace Kamene Muthungu and Priscilla Mati Muthungu, which is contested by the applicant.
29. It is true that the respondent is listed as the only beneficiary in the chief's letter dated August 25, 2014. During confirmation of the grant, the respondent listed herself, John Muthungu, Ester Kathure Muthungu, Priscila Mati Muthungu, Japhet Mucee Nyaga and Grace Kamene Muthungu as the only people entitled to a share of the estate property.



30. The copy of Green Card (land register) on record shows that the estate property belongs to the deceased, a fact admitted by the respondent in her testimony. On September 20, 2020, one Nyaga Lukunga reported to Kithino Police Post that he had been assaulted by John Muthungu. There is a letter dated October 7, 2020 from the revenue officer, Tharaka South Sub County showing that Plot Nos. Chiakariga 36 and 37 are registered in the name of the deceased. There is also a note from the demarcation officer dated January 22, 2021 showing that Chiakariga Parcel No 1861 belongs to Joyce Kathambi Muthungu.
31. There is no doubt that the deceased herein died intestate and he was survived by one widow and 2 children and 4 others, who are disputed.
32. The court finds that the respondent indeed obtained the grant fraudulently by concealing from the court that the deceased was survived by other beneficiaries, including the applicant. The respondent equally failed to disclose to the court that the deceased was the registered owner of Chiakariga Plot Nos. 36 and 37 and the estate property. Those are grounds which fall within the purview of section 76 of the Law of Succession Act, to warrant the grant being revoked.
33. The fact that the applicant and the other beneficiaries failed to appear before the chief did not take away their right to be listed as beneficiaries of their deceased father and inherit his estate.

ORDERS

34. Accordingly, for the reasons set out above, the applicant's application dated October 19, 2020 is merited and it is allowed in the following terms:
 1. The grant of letters of administration issued to the respondent on June 16, 2015 and subsequently confirmed May 31, 2018 is hereby revoked.
 2. A fresh grant shall issue jointly to the applicant and the respondent.
 3. The Parties will be at liberty to apply for confirmation of the grant and distribution of the estate.
35. There shall be no order as to costs.
Order accordingly.

DATED AND DELIVERED ON THIS 16TH DAY OF FEBRUARY, 2023.



EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Ndubi Advocate for the Applicant

Mr. Muchoba Advocate for the Respondent

4

MERU HC SUCC. CAUSE NO. 128 OF 2015

