



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**FAMILY DIVISION**

**SUCCESSION NO. 3298 OF 2013**

**IN THE MATTER OF THE ESTATE OF RENSON KINUTHIA MAGONDU (DECEASED)**

**PAULINE WAIRIMU KIMUHU**

**KELVIN KAMAU KIMUHU**

**MICHELLE NYAMURWA.....APPLICANTS**

**VERSUS**

**NANCY NYAKANINI MAGONDU**

**(As the Administratrix of the Estate of RENSON KINUTHIA MAGONDU).....RESPONDENT**

**JUDGMENT**

1. Before this Court is the summons for Revocation/Annulment of Grant dated **10<sup>th</sup> September 2019** filed by the Objectors **PAULINE WAIRIMU KIMUHU, KELVIN KAMAU MAGONDU** and **MICHELLE NYAMURWA** in which the following orders were sought-

**“1. SPENT**

**2. SPENT**

**3. THAT the Honourable court be pleased to revoke or annul the amended Grant dated 16<sup>th</sup> January 2017, certificate of confirmation of Grant dated 27<sup>th</sup> July 2015, as rectified on 23<sup>rd</sup> May 2016 and further rectified on 16<sup>th</sup> January 2017.**

**4. THAT the costs of this application be costs in the cause.”**

2. The summons was premised upon **section 47 and 76 (b)** of the law of **Succession Act, Rule 73** of the **Probate and Administration Rules** and all other enabling provisions of the law and was supported by the Affidavit of even date sworn by the Objectors.

3. The Respondent **NANCY NYAKANINI MAGONDU** (as Administratrix of the Estate of **RENSON KINUTHIA MAGONDU**) opposed the summons for Revocation of Grant through her Replying Affidavit dated **23<sup>rd</sup> October 2019**.

4. The summons was canvassed by way of oral evidence. The Objectors called **five (5)** witnesses in support of their case while the Respondent called **four (4)** witnesses.

**BACKGROUND**

5. The succession cause relates to the estate of **RENSON KINUTHIA MAGONDU** (hereinafter “the **Deceased**”) who died intestate at the **Mater Hospital** on **20<sup>th</sup> May 2013**. Following the demise of the Deceased **JOYCE MUTHONI MAGONDU** and **NANCY NYAKANINI MAGONDU** as **widow** and **daughter** respectively of the Deceased filed in the High Court a petition seeking Grant of letters of Administration Intestate to the estate of the Deceased. Letters of Administration were duly issued to the Respondent and her mother on **3<sup>rd</sup>**

**April 2014** which Grant was duly confirmed on **27<sup>th</sup> July 2015**. The said confirmed Grant was thereafter rectified on **23<sup>rd</sup> May 2016**.

6. The widow of the Deceased **Joyce Muthoni Magondu** who was one of the Administratrix of the estate passed away on **17<sup>th</sup> September 2016** leaving the Respondent as the sole Administratrix of the estate of the Deceased. Accordingly, the confirmed Grant issued was amended on **16<sup>th</sup> January 2017** indicating the name of the Respondent herein as the sole Administratrix of the Estate.

7. The 1<sup>st</sup> Objector **Pauline Wairimu Kimuhu** who claims to have also been married to the Deceased during her lifetime and the 2<sup>nd</sup> and 3<sup>rd</sup> Objectors who claim to be the biological children of the Deceased filed the summons for Revocation/Annulment of Grant seeking revocation of the Grant held by the Respondent.

### THE EVIDENCE

8. The 1<sup>st</sup> Objector **Pauline Wairimu Kimuhu** testified on behalf of all three Objectors. She stated that she got married to the Deceased under **Kikuyu Customary Law** in the year **1992**. That this union was blessed with **two** children a son **Kelvin Kamau Magondu** (the 2<sup>nd</sup> Objector) born on **2<sup>nd</sup> December 1993** and a daughter **Michelle Nyamurwa Magondu** (the 3<sup>rd</sup> Objector) who was born on **19<sup>th</sup> March 1999**.

9. The Objectors assert that as the widow and children of the Deceased they are beneficiaries to his estate. The 1<sup>st</sup> Objector told the court that she and her children attended the burial of the Deceased, that the 2<sup>nd</sup> Objector was one of the pall-bearers and that the Objectors were recognized as family both in the obituary and during the funeral program.

10. The 1<sup>st</sup> Objector stated that after the burial much to their surprise the Respondent and her late mother secretly petitioned the High Court for Grant of letters of Administration without informing or involving the Objectors. That in support of their Petition the Respondent annexed a letter from the Chief, which listed only the 1<sup>st</sup> wife and her **three (3)** children as the survivors of the Deceased.

11. That after discovering that letters of Administration had been issued in respect of the estate the Objectors approached the local chief to reconcile the parties but that the Respondent was evasive until **August 2019** when the Respondent revealed that she had already obtained letters of Administration from the court.

12. The 1<sup>st</sup> Objector stated that they then decided to place a caution upon the Deceased ancestral home being Title Number **Dagoretti/Waithaka/388**. However, a second property belonging to the Deceased being Title Number **Dagoretti/Riruta/479** had already been transferred to the estate of the 1<sup>st</sup> wife in an obvious attempt to deny the Objectors their rights to inheritance over the same. The Objectors therefore were unable to register a caution over **Dagoretti/Riruta/479** which they allege forms part of the estate of the Deceased.

13. The objectors allege that the confirmed Grant issued to the Respondents was obtained fraudulently by misrepresentation of material facts. That the Deceased having married a 2<sup>nd</sup> wife and sired children with her whom he recognized during his lifetime, the Respondents failed to reveal the existence of this second family when petitioning for letters of Administration. That the Grant so issued is for revocation which is the prayer made to this court.

14. **PW2 DANIEL KIRUMBA KARIUKI** told the court that he is the neighbour of the Deceased and has known the Deceased for over **50 years**. **PW2** stated that the Deceased informed him that he had married **Pauline Wairimu** (the 1<sup>st</sup> Objector) as his 2<sup>nd</sup> wife. That **Pauline Wairimu** bore **two** children for the Deceased, a son and a daughter. According to **PW2** the 1<sup>st</sup> wife **Joyce Muthoni** lived at **Lenana** whilst the 2<sup>nd</sup> wife lived in **Riverside**.

15. **PW3 JOSEPH KINYUA KINUTHIA** stated that he was a stepbrother to the Deceased. He said that he was aware that the Deceased had **two** wives **Joyce Muthoni** and **Pauline Wairimu**. That the 1<sup>st</sup> wife had **four (4)** children whilst the 2<sup>nd</sup> wife had **two (2)** children with the Deceased. **PW3** stated that he was surprised to learn that the family of the 2<sup>nd</sup> wife had been excluded in the distribution of the estate.

16. **PW4 JOHN KIMUHU KIRAGU** was the father of the 1<sup>st</sup> Objector. He told the court that he knew the Deceased as his son-in-law. That sometime in the year **1972** the Deceased came to the home of **PW2** and married his daughter **Pauline Wairimu** under **Kikuyu Customary Law**. **PW2** told the court that the Deceased paid to him a dowry of **forty (40)** goats and stated that the Deceased even built a house for the old man. **PW 4** confirms that he slaughtered a goat in line with Kikuyu customs to bless the union between the Deceased and his daughter.

17. **PW5 JANE WANJIKU KARIUKI** was a sister to the Deceased. She stated that her brother was married to **two wives Joyce Muthoni** who had **four (4)** children and **Pauline Wairimu** (1<sup>st</sup> Objector) who bore **two children** with the Deceased. **PW5** told the court that she and other family members visited the home of the father of 1<sup>st</sup> Objector in **1992** for a Kikuyu traditional marriage ceremony. That she was surprised to hear that the family of the 1<sup>st</sup> wife now claim to be the only beneficiaries to the property of the Deceased.

18. The Respondent **Nancy Nyakanini Magondu** testified on her own behalf. She stated that the Deceased was her father and asserted that the Deceased was married to only one wife **Joyce Muthoni Magondu** who was her mother. The Respondent categorically denied that the Deceased had ever married the 1<sup>st</sup> Objector as a 2<sup>nd</sup> wife thought she conceded that the Deceased had prior to his death introduced the 2<sup>nd</sup> and 3<sup>rd</sup> Objectors to the family as his children.

19. The Respondent denies that the Objectors were recognized as family during the burial of the Deceased. She denies having '**secretly**' filed a petition for letters of Administration Intestate and insists the petition was advertised vide the Kenya Gazette Notice of **28<sup>th</sup> February 2014**

thereby giving notice to the public of the existence of said petition.

20. The Respondent states that this summons for Revocation ought to be dismissed as the same has come too late in the day. That the Objectors never bothered to contact the first wife after the death of the Deceased and that they have remained indolent for **six (6) years** following the confirmation of Grant.

21. The Respondent insists that the properties in **Dagoretti** are not available for distribution, as **Dagoretti Riruta/479** does **not** form part of the estate of the Deceased whilst **Dagoretti/Waithaka/388** is owned jointly between the Deceased and his first wife **Joyce Muthoni**.

22. The Respondent states that on **18<sup>th</sup> January 2000** the Deceased caused Title Number **KAJIADO/KITENGELA/11005** to be transferred to **Kelvin Kimuhu** the 2<sup>nd</sup> Objector who was then aged only **seven (7) years** which fact the Objectors have failed to disclose to the court. The Respondent insists that the correct procedure was followed in obtaining the confirmed Grant and she urges the court to dismiss this summons in its entirety.

23. **DW2 ESTHER WANGARI, DW3 NANCY WANJIKU NDUNGU** and **DW4 MARY WAMBUI MWAI** all testified that they knew the Deceased well as they were his neighbours at **Lenana**. They all insist that the Deceased was married to only one wife **Joyce Muthoni** with whom he bore **four (4)** children. The witnesses all deny that the Deceased ever married a second wife and deny that the children of the 1<sup>st</sup> Objector were sired by the Deceased.

24. At the close of oral evidence parties were invited to file their written submissions. The Objectors filed the written submissions dated **24<sup>th</sup> July 2021** whilst the Respondent relied upon her written submissions dated **16<sup>th</sup> July 2021**.

### ANALYSIS AND DETERMINATION

25. I have carefully considered this summons for Revocation of Grant, the Affidavit filed in reply, the evidence adduced before this court as well as the written submission filed by the parties. The following are the issues which arise for determination –

- (i) Whether the 1<sup>st</sup> Objector **Pauline Wairimu Kimuhu** is a wife of the Deceased and a beneficiary to his estate.
- (ii) Whether the 2<sup>nd</sup> and 3<sup>rd</sup> Objectors **Kelvin Kamau Kimuhu** and **Michelle Nyamurwa** are the children of the Deceased and beneficiaries of his estate.
- (iii) Whether the confirmed Grant issued to the Respondent ought to be revoked.

#### **i. Whether the 1<sup>st</sup> Objector is a wife to the Deceased**

26 It is common ground that the Deceased passed away on **20<sup>th</sup> May 2013** at the **Mater Hospital** in **Nairobi**. A copy of the Death Certificate Serial Number **167774** is annexed to the Petition for Grant of letters of Administration Intestate dated **20<sup>th</sup> December 2013**.

27. It is also a fact that the **High Court** in **Nairobi** issued a Grant of letters of Administration Intestate on **3<sup>rd</sup> April 2014** to **Joyce Muthoni Magongu** and **Nancy Nyakanini Magongu**. That Grant was duly confirmed to the two on **27<sup>th</sup> July 2015**.

28. It is not in dispute that **Joyce Muthoni** who was one of the Administrators of the estate passed away in Nairobi on **17<sup>th</sup> September 2016**. A copy of the Death Certificate appears as Annexure ‘**NNM ‘1**’ to the supporting Affidavit dated **16<sup>th</sup> November 2016** sworn by the 1<sup>st</sup> Objector. Following the demise of one of the Administrator, the confirmed Grant originally issued to the two Administrators was rectified on **16<sup>th</sup> January 2017** to include the name of the 1<sup>st</sup> Objector as **sole Administrator** to the estate of the Deceased.

29. The 1<sup>st</sup> Objectors evidence was that she got married the Deceased under **Kikuyu Customary Law** sometime in the year **1992**. **PW2 John Kimuhu** who was the father of the 1<sup>st</sup> Objector supported her evidence and testified that the Deceased visited his home in company of his relatives for the marriage ceremony and that he received **40 goats** as dowry for his daughter. **PW5 Jane Wanjiku** a sister to the Deceased told the court that she was one amongst the relatives who accompanied the Deceased when he went to marry the 1<sup>st</sup> Objector as his second wife. **PW2 Daniel Kirumba** a neighbour to the Deceased and **PW3 Joseph Kinyua** a stepbrother to the Deceased both state that the Deceased told them that he had married a second wife by the name **Pauline Wairimu**.

30. The Respondent and her witness on the other hand categorically deny that the Deceased (her father) ever married a second wife.

31. It is not in dispute and indeed is conceded by the Objectors and all their witnesses that the Deceased had first married one **Joyce Muthoni** who died in the **year 2016**. It is also not in dispute that the Deceased marriage to his first wife was a statutory marriage celebrated under the **African Christian Marriage and Divorce Act, Cap 151 Laws of Kenya**. A copy of the couples Marriage Certificate Serial Number **267309** is annexed to the Respondents Replying Affidavit dated **23<sup>rd</sup> October 2019** (Annexure **NNM-‘1’**). **Section 37 of 150** (now repealed) which is similar to **section 9** of the **Marriage Act 2014** provides as follows:-

**“Any person who is married under this Act whose marriage is declared by this Act to be valid, shall be incapable during the continuation of such marriage of contracting a valid marriage under any native law of customs but, save as aforesaid, nothing in this Act contained shall affect the validity of any marriage contract under or in accordance with any native law or**

customer, or in any manner apply to marriages so contracted”. (own emphasis)

32. The Deceased got married to **Joyce Muthoni** in **April of 1972**. They got married under statutory law. There is no evidence and indeed there has been no allegation from the Objectors that the Deceased’s marriage to his first wife was ever dissolved. During the subsistence of a valid statutory marriage the Deceased had no **legal capacity** to enter into another marriage statutory or otherwise with another party.

33. In the case of **Esther Njeri Gichuru – vs Samuel Kimuchi Gichuru [2008] eKLR** the Court citing the case of **MACHANI – VS – VERNOOR [1985] KLR** stated thus:-

**“... The presumption (of marriage) covers two aspects, that the parties had the capacity to enter into a marriage and that they did so in effect. During the continuance of a previous marriage the already married party would have no capacity to enter into a new marriage, and the new marriage would be null until the previous marriage had been brought to an end by final decree of divorce such as a decree absolute...”**(own emphasis)

34. Likewise in the case of **MARY WANJIRU GITHATU –vs ESTHER WANJIRU KIARIE Appeal No. 20 of 2009 (Eldoret) Hon Bosire JA**, (as he then was) held as follows:-

**“The existence or otherwise of a marriage is a question of fact. Likewise, whether a marriage can be presumed is a question of fact. It is not dependant on any system of law except where by reason of a written law it is excluded. For instance a marriage cannot be presumed in favour of any party in a relationship in which one of them is married under statute...”**  
(Own emphasis)

35. A statutory marriage is deemed to be monogamous in nature and during the subsistence of a statutory marriage neither spouse can legally enter into a marriage with a third party without first dissolving the statutory marriage through a legal decree absolute.

36. It is manifest that the Deceased never divorced his wife **Joyce Muthoni**. Therefore notwithstanding any customary rites and/or ceremonies he had no legal capacity to enter into a marriage with the 1<sup>st</sup> Objector. I find that the purported marriage between the Deceased and the 1<sup>st</sup> Objector is null and void. **Section 29(a) of the Law of Succession Act** recognizes only the legal wife or wives (in a polygamous marriage) and children of the Deceased (as dependants).

The 1<sup>st</sup> Objector is not a wife to the Deceased and as such cannot be deemed to be a beneficiary to his estate under the **Law of Succession Act**.

(ii) **Whether the 2<sup>nd</sup> and 3<sup>rd</sup> Objectors are children of the Deceased**

37. The 2<sup>nd</sup> and 3<sup>rd</sup> Objectors claim to be beneficiaries to the estate by virtue of being the biological children of the Deceased. In order to prove their claim the Objectors need to satisfy the court that they are in fact the biological children of the Deceased. **Section 3(2) of the Law of Succession Act** provides as follows:-

**“(2) Reference in this Act to “child” or “children” shall include a child conceived but not yet born (as long as that child is subsequently born alive) and, in relation to a male person, any child whom he has expressly recognized or in fact accepted as a child of his own or for whom he has voluntarily assumed permanent responsibility”.**(Own emphasis)

38. The 1<sup>st</sup> Objector told the court that the 2<sup>nd</sup> and 3<sup>rd</sup> Objectors are her children who were sired by the Deceased. The fact that this court has found that no the legal union existed between the Deceased and the 1<sup>st</sup> Objector does not preclude the Deceased from being the biological father of the two children.

39. In this modern scientific age the surest way to establish paternity would be by way of **DNA** test. However, the Deceased was buried in the **year 2013** almost **ten (10)** years ago, thus it would be impracticable to obtain samples for **DNA** testing at this point in time.

40. The Objectors have annexed to their summons dated **10<sup>th</sup> September 2019** copies of the birth certificates of the 2<sup>nd</sup> and 3<sup>rd</sup> Objectors (Annexure ‘**PKMJ**’). The birth Certificate for **Kelvin Kamau Kimuhu** (2<sup>nd</sup> Objector) bears Serial No. **952816** whilst the Birth Certificate in respect of **Michelle Nyamurwa** (3<sup>rd</sup> Objector) bears Serial Number **531734**. In both Birth Certificates, the name of the father is indicated as **Renson Magondu Kinuthia** who is the Deceased in this cause. The Birth Certificates were issued in **May 1999** and **February 2001** respectively, meaning that both were issued prior to the death of the Deceased which occurred in **May 2013**. Therefore, it can be presumed that the birth certificates were obtained with the knowledge and consent of the Deceased.

41. Aside from the two birth certificates the Objectors have annexed the **Ministry of Health Immunization Cards** for the 2<sup>nd</sup> and 3<sup>rd</sup> Objectors which also indicate the name of the Deceased **Renson Magondu** as their father. The 1<sup>st</sup> Objector also identified photographs of herself and the Deceased (**Page 11** of the summons) leaving **Mater Hospital** after the birth of the 3<sup>rd</sup> Objector. In the photograph the Deceased is holding the baby as any proud father would. It has not been denied by the Respondent that the photograph is of her father – the Deceased.

42. The Objectors told the court that they participated in and were recognized during the burial of the Deceased at his rural home in **Kiambu County**. A copy of the Obituary (Annexure “**PKM2**”) indicates that the 2<sup>nd</sup> and 3<sup>rd</sup> Objectors were listed amongst the children of the Deceased. Additionally photographs produced by the Objectors at **Page 16** of the summons show them standing by the Graveside and the 2<sup>nd</sup>

Objector, 'Kelvin' was one of the pall bearers which is a duty normally reserved for close relatives like brothers and/or sons of the Deceased. The participation of the 2<sup>nd</sup> and 3<sup>rd</sup> Objector in the burial and their inclusion in the obituary are evidence that the two were recognized by the family as the children of the Deceased.

43. Most importantly, the Respondent concedes that the 2<sup>nd</sup> and 3<sup>rd</sup> Objectors were the children of her father. She admits that the two were recognized in the obituary and that they attended the burial of the Deceased. The Respondent told the court that the Deceased did introduce the 2<sup>nd</sup> and 3<sup>rd</sup> Objectors to his family as his children prior to his death.

44. It is clear then that the Deceased 'expressly recognized and accepted' the 2<sup>nd</sup> and 3<sup>rd</sup> Objectors as his children in line with **section 3(2)** of the **Law of Succession Act**. I therefore find and hold that 'Kelvin' and 'Michelle' were indeed the children of the Deceased and as such are beneficiaries of his estate.

(iii) **Whether the Grant should be revoked.**

45. As stated earlier it is not disputed that the Respondent currently holds a confirmed Grant issued in her name in respect of the estate of the Deceased. The Objectors pray that said Grant be revoked alleging that the same was obtained fraudulently.

46. **Section 76 of the Laws of Succession Act Cap 160, Laws of Kenya** provides for the grounds upon which a Grant may be revoked 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.” (own emphasis)**

47. The Objectors allege that in petitioning for the Grant the Respondent deliberately and maliciously excluded the names of the 2<sup>nd</sup> and 3<sup>rd</sup> Objectors as beneficiaries to the estate of the Deceased therefore misleading the court.

48. I have perused the Affidavit in support of letters of Administration interstate dated **20<sup>th</sup> December 2013**. The same names the following as the heirs of the Deceased-

**(a) Joyce Muthoni Magondu (wife)**

**(b) Nancy Nyakanini Magondu (Daughter)**

**(c) Janet Wanjiku Magondu (Daughter)**

**(d) Grace Gathoni Magondu (Daughter)**

No mention is made of the 2<sup>nd</sup> and 3<sup>rd</sup> Objectors who are also children of the Deceased.

49. **Rules 26(1) of the Probate and Administration Rules** provide as follows:-

**“26(1) Letters of Administration shall not be granted to any applicants without notice to any other person entitled in the**

same degree as or in priority of the Applicants”.

50. In this case the Respondent and her late mother did not issue notice to the 2<sup>nd</sup> and 3<sup>rd</sup> Objectors of the petition for Grant of letters of Administration Intestate. Neither did the Respondent seek and/or obtain the written consent of the 2<sup>nd</sup> and 3<sup>rd</sup> objectors as required by **Rule 26(2)**.

51. It cannot be argued that the Respondent was unaware of the existence of the 2<sup>nd</sup> and 3<sup>rd</sup> Objectors. She has already conceded that the two were the children of the Deceased. Under re-examination by her Advocate the Respondent admits that the Deceased introduced the 2<sup>nd</sup> and 3<sup>rd</sup> Objector to his wife. Therefore, at the time the Grant was being sought the Deceased’s wife and the Respondent were fully aware of the existence of the Objectors and were aware that the 2<sup>nd</sup> and 3<sup>rd</sup> Objector had been recognized by the Deceased as his children.

52. Despite having knowledge of other children of the Deceased the Respondent misrepresented to their local chief that the Deceased had only **three** daughters. The Respondent therefore falsely averred in the Affidavit in support of the Petition for letters of Administration that the Deceased only had **three (3)** daughters. The Respondent willfully misled the court and concealed information material to the Succession Cause i.e., that the Deceased had **two** other children.

53. Under cross-examination the Respondent admits thus:-

**“I was aware my father had other children called Kelvin and Michelle. I did not include them in our Petition for letters of Administration. We did not inform the chief of their existence...”**

54. In **RE ESTATE OF MAGANGI OBUKI (Deceased [2020]eKLR Hon Lady Justice Wendoh** held as follows:-

**“I am satisfied that, there is ample evidence that the Respondent did more than just conceal material facts. He went further and misrepresented facts to the court in order to defraud the Objector of their inheritance. The objector has demonstrated within the purview of Section 76 that the grant was fraudulently obtained and there was concealment of material facts and misrepresentation. It is therefore this court’s finding, that the Grant issued to the Respondent is a proper candidate for revocation.”**

55. Likewise in **RE ESTATE OF MOSES WACHIRA KIMOTHO (Deceased)** the Court in stressing the importance of disclosing to the court all material facts whilst seeking Grant of letters of Administration observed as follows:-

**“I am certain that had the applicants been made aware of the application for the confirmation of grant by being served they would have brought to the fore their aforesaid interest in the estate of the deceased and the resultant grant would have taken care of those interests. Further had the respondent been forthright and candid and included the applicants as beneficiaries of a portion of the estate of the deceased as purchasers for value, the court in confirming the grant would have taken into account their interest in the estate of the deceased. As it is therefore the grant was obtained fraudulently by making of a false statement and or concealment from court of something material to the cause. The respondent knew of the applicants’ interest in the estate of the deceased yet she chose to ignore them completely in her petition of letters of administration intestate. She also ignored them completely when she applied for the confirmation of the grant.”**

56. There can be no doubt that the failure to disclose the existence of the 2<sup>nd</sup> and 3<sup>rd</sup> Objector to the local chief and in their Petition for letters of Administration was a deliberate ploy by the Respondent and her late mother to exclude the 2<sup>nd</sup> and 3<sup>rd</sup> Objectors from deriving any benefits from the estate of the Deceased thereby denying the two their lawful inheritance. I have no hesitation in finding that the Grant issued to the Respondent was fraudulently obtained. I therefore revoke the Grant issued on **3<sup>rd</sup> April 2014** and confirmed on **27<sup>th</sup> July 2015**. Accordingly, this summons for Revocation of Grant succeeds and I make the following orders:-

**(1) The Grant of letters of Administration Intestate made to the Respondent Nancy Nyakanini Magondu on 3<sup>rd</sup> April 2014, which Grant was confirmed on 27<sup>th</sup> July 2015 and rectified on 23<sup>rd</sup> may 2016 be and is hereby revoked.**

**(2) That a fresh Grant issue in the names of the Respondent Nancy Nyakanini Magondu and the 2<sup>nd</sup> Objector Kelvin Kamau Kimuhu as Administrators.**

**(3) The parties are referred to Mediation in order to reach an Agreement with respect to distribution of the estate, after which a consent on distribution to be filed in court within sixty (60) days.**

**(4) If parties are unable to agree on the mode of distribution the issue to be referred to court for determination.**

**(5) This being a family matter each side will pay its own costs.**

Dated in **Nairobi** this **11<sup>th</sup>** day of **February 2022**.

.....

**MAUREEN A. ODERO**

JUDGE