



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**SUCCESSION CAUSE NO. 85 OF 2017**

**(Formerly Nairobi Succession Cause No. 3664 of 2004 as consolidated**

**with Nairobi Succession Cause No.5 of 2007)**

**IN THE MATTER OF THE ESTATE OF GEORGE WAIGANJO MBURU (DECEASED)**

**VERONICA NJERI MBURU.....APPLICANT**

**VERSUS**

**PETER MBURU NDUNG’U.....ADMINISTRATOR/RESPONDENT**

**GRACE NYAKIO WAIGANJO.....ADMINISTRATOR/RESPONDENT**

**RULING**

1. For determination is the summons dated 16<sup>th</sup> April 2018 seeking the revocation of the grant as issued and confirmed to **Peter Ndung’u Mburu** (hereafter Peter) and **Grace Nyakio Waiganjo** (hereafter Nyakio). The undisputed pertinent background to the summons is as follows. The deceased herein, **George Waiganjo Mburu** died intestate on 20<sup>th</sup> December 1999, while possessed of three properties, namely, land parcels **LR No. Nachu/Ndacha/180** (2.0ha); **LR no. Karai/Gikambura/705** (0.73acres); and **LR No. Karai/Gikambura/677** (5 acres). The latter two parcels were registered in the name of the deceased in 1993 and the former in 1995.
2. The deceased was the son of **Mburu Nduma** alias **Mburu Waiganjo** who died around 1953. During his lifetime, **Mburu Nduma** had three wives namely, **Jane Waithera**, **Loise Nduta** and **Irene Wanjiru** each of whom had a son or sons. The said progenitor had a larger piece of land measuring 10 acres, and upon his demise or in the lifetime of the said patriarch, the ten acres were apportioned to his wives. The 2<sup>nd</sup> and 3<sup>rd</sup> wives each got 3 acres while the first wife **Jane Waithera** received four acres.
3. It appears however that by the time **Jane Waithera** (hereafter Waithera) died, an extra acre had been acquired and by the time of registration, the land reserved measured five acres in total. There are conflicting accounts as to who and whether the extra 2acres or 1 acre were purchased by the said Waithera or by the deceased herein. Be that as it may, as at registration in 1993 the parcel inherited by the house of **Waithera** that is **LR. No.Karai/Gikambura/677** measured 5 acres.
4. It is not in dispute that in accordance with custom, the share of land devolving upon each of the three houses of **Mburu Nduma** was registered in the names of the first son in each house, to hold in trust for his house. Waithera had three sons, namely **George Waiganjo Mburu**, the deceased herein, **Peter Ndungu Mburu** (Peter, administrator herein) and **Stanley Githinji**.
5. There is uncontroverted evidence that Stanley Githinji settled in Gitaru area on a piece of land inherited from his father, while Peter and the deceased were to share the land parcel **LR No. Karai/Gikambura/677** [the disputed property]. However, a dispute broke out between these two brothers as to the mode of sharing the land and Peter sought the help of the local administration and elders in resolving the impasse. To no avail, as the deceased herein rejected Peter’s claim to a half portion of the said disputed property.
6. Following the death of George Waiganjo Mburu, a succession cause was filed by Peter, being **Nairobi Succession Cause no. 3664 of 2004**, and which listed only the disputed asset as comprising his estate. The grant was eventually issued to Peter and confirmed on 20/11/2006. Under the confirmed grant, the disputed property was to be shared equally between Peter and Nyakio.
7. However, in January, 2007 Nyakio filed her own petition alongside an alleged purchaser **Mary Muchiku Muroki** for a grant in **Nairobi Succession Cause no. 5 of 2007**. Although a grant was issued to her in March, 2007, the subsequent summons to confirm the grant dated 22<sup>nd</sup> November 2007 was met by Peter’s affidavit of protest which *inter alia* asserted that he already had a confirmed grant and that

Nyakio's grant was irregularly obtained. Thus, on 1/12/2008 when the advocates of Peter and Nyakio appeared before **Gacheche J** (as she then was) they recorded a consent that the two succession causes be consolidated. The lead file became **Nairobi Succession Cause No. 3664 of 2004**.

8. Following a hiatus during which parties engaged in negotiation, the matter was placed before **Musyoka J.** on 21/8/2013. The court was informed of the parties' proposal that the two grants to Peter and Nyakio be revoked and a fresh grant be issued in their joint names. In his ruling delivered on 31<sup>st</sup> January, 2014 **Musyoka J** revoked the two grants in the two causes and further appointed Peter and Nyakio as administrators of the estate of the deceased herein. The court further directed that:

**“The grant shall be made out of High Court Succession Cause No. 3664 of 2004. The certificate of confirmation of grant dated 20<sup>th</sup> November, 2006 (to Peter) is hereby cancelled.**

**The new administrators shall make a fresh application for confirmation of grant within 45 days. The matter shall be mentioned after 45 days for compliance”.**

9. Although the two petitions had listed various beneficiaries surviving the deceased, it appears that the proceedings following the revocation were confined between the two administrators. No summons to confirm grant were filed in accordance with the orders of **Musyoka J.** above but the parties' advocates had subsequently intimated that discussions were being held and were at advance stages, as at 1/02/2016 when the matter was next mentioned.

10. On the next scheduled mention (1/3/2016) the two administrators through their advocates recorded a consent. To the effect that land parcel **LR No. Karai/Gikambura/705** “*be distributed to Margaret Wambui Waiganjo*” and land parcel **LR No. Nachu/Ndacha/180** “*be distributed to Mary Muchiku Muroki*” and the matter thereafter to proceed by way of *viva voce* evidence in respect of the disputed asset, **Karai/Gikambura/677**. Directions were then taken and the hearing took place on 11/05/2016. Only Peter led evidence, and counsel for Nyakio though present and participating in the trial did not indicate that his client intended to adduce evidence, rather agreeing with counsel for Peter that the parties proceed to file written submissions. Judgment was delivered on 12<sup>th</sup> May, 2017.

11. In the course of his judgment, **Musyoka J.** had observed that despite his directions of 31/01/2014 the parties had failed to file a fresh application for confirmation of the joint grant. The learned Judge stated that in the circumstances, he would proceed on the presumption that the trial conducted before him regarding distribution of the estate of the deceased herein was founded on the summons to confirm grant in **Nairobi Succession Cause No. 5 of 2007** dated and filed on 13<sup>th</sup> December 2007 by Nyakio.

12. The said summons, related to the grant earlier made to Nyakio and Mary Muchiku Muroki but revoked on 31/01/2014 and proposed that the disputed asset namely, **LR. No. Karai/Gikambura/677** “*be registered*” in the name of Nyakio to hold in trust for Francis Kinuthia Waiganjo, Veronica Njeri Mburu, Jane Njeri Ngige, Nduta Muigai, Jane Waithera Ndung'u, Rose Nduta Waiganjo, Hildah Wanjiru Waiganjo and Humphrey Mboroi Waiganjo. Further that the parcels **LR Nos. Karai/Gikambura/705** and **Nachu/Ndacha/180** “*be registered*” in the names of Margaret Wambui Waiganjo and Mary Muchiku Muroki, respectively.

13. In his judgment, **Musyoka J.** restated the evidence by Peter and his witness and observed that the widow of the deceased herein (Nyakio) did not call or adduce evidence to support the confirmation application and that at the conclusion of the proceedings the parties invited the court to decide the matter based on evidence adduced.

14. The learned Judge proceeded to conclude that:

**“As the widow (Nyakio) did not call any evidence, the protestor's case was not challenged, and the evidence adduced was not contradicted or controverted. In the absence of counter evidence, I shall hold that the version of events as narrated by the protestor and his witness represent the true state of affairs. The protestor is entitled to half share of Karai/Gikambura/677; for the deceased held the property in trust for himself and the protestor. The grant that was made herein on 31<sup>st</sup> January, 2014 shall be confirmed in those terms. Orders accordingly.”**

15. On 12<sup>th</sup> May, 2017 a certificate of confirmation of grant issued to Peter and Nyakio. Under the said confirmed grant, which was later amended, land parcel **LR No. Karai/Gikambura/677**, the only asset in the grant was to be shared equally between Peter and Nyakio. The amended certificate of confirmation of grant also dated 12<sup>th</sup> May, 2017 however includes the two other assets of the deceased, namely land parcels **LR No. Karai/Gikambura/705** and **Nachu/Ndacha/180** which were assigned to Margaret Wambui Waiganjo and Mary Muchiku Muroki, respectively. Although the certificate of confirmation of grant does not indicate in the title that it was amended, there is correspondence dated 28<sup>th</sup> September, 2017 and 4<sup>th</sup> October, 2017 to the Deputy Registrar seeking the amendment so as to include the latter two parcels.

16. Five months after the judgment of **Musyoka J** the first of two applications challenging the grant as confirmed was filed. The application, dated 2<sup>nd</sup> October 2017 and filed on the same date, is by **Jane Njeri Ngige** and **Veronica Njeri Mburu**, who are the widows of two sons of the deceased herein and who are now deceased. The application sought in part the review or setting aside of the judgment of 12<sup>th</sup> May 2017. On grounds *inter alia* that some beneficiaries of the estate of the deceased herein were excluded in the succession cause and disinherited under the mode of distribution in the judgment. The application was supported by the affidavit sworn by Jane Njeri Njoroge (Ngige) wife of the deceased's son James Ngige (deceased).

17. Although the court had on 3/10/2017 fixed the application for hearing on 14/12/2017, it seems that the matter was not placed before the Judge and four months later on 16/04/2018 the second application, a summons to revoke grant was filed by **Veronica Njeri Mburu** widow of the intestate's son, **Godfrey Mburu Nduma** (deceased) and seeking that the grant to Peter and Nyakio issued on 31<sup>st</sup> January, 2014 and

confirmed on 12/05/2017 be revoked, and in the alternative, a fresh application for confirmation of grant and mode of distribution including all beneficiaries be filed. On grounds that the confirmed grant effectively disinherited and rendered destitute the beneficiaries to the estate who were neither consulted about nor involved in the succession process. This summons is the subject of this ruling.

18. To oppose the summons, Peter swore a long affidavit in reply setting out the history of the matter and asserting his claim to the half portion of the disputed asset. Directions were given on 24/6/2019 for the parties to file their witness affidavits for purposes of the *viva voce* hearing of the summons, which took place from 24<sup>th</sup> September 2019. Before the hearing commenced on the said date, the court was informed by Mr. Kenneth Wilson then holding brief for counsel for Nyakio that she did not oppose the revocation application. Later in the day however, it was communicated that counsel for Nyakio intended to file an affidavit and that the above position was inaccurate.

19. **Veronica Njeri Mburu** testified as **PW1**, while **Jane Njeri Njoroge** (Ngige) and her son **George Nduma Ngige** testified as **PW2** and **PW3**. For his part, Peter gave evidence as **RW1** and called a retired chief **Daniel Njega Njung'e** (**RW2**) and his half-brother **Geoffrey Njogu Mburu** (**PW3**) as his witnesses. Before the trial could close Nyakio, an aged citizen rose to address the court and expressing disappointment with her counsel's non-attendance, indicated to act in person and lead evidence. Although she had not filed any affidavits in respect of the summons, the Court obliged her in view of her advanced age, allowing her to give oral evidence as **RW4**.

20. **PW1** testified that the deceased the father of Godfrey Mburu Waiganjo, her deceased husband. She contended that she did not participate and /or consent to the succession proceedings that resulted in what she viewed as an unfair distribution of the estate. Under cross-examination she denied knowledge of the succession causes filed by Nyakio and Peter. She complained that together with her children she did not receive a share of the estate as Nyakio had excluded them. According to her Peter was entitled to only one acre of the disputed asset.

21. The testimony of **PW2** was that she is the widow of James Ngige, a son of the intestate herein. She denied participating in the succession cause in respect of the deceased's estate or giving consent to the same. She contended that Peter was not entitled to half of the disputed parcel. Her son, **PW3** also stated that he was not involved in the succession cause regarding his grandfather's estate. Asserting to have obtained the history of the disputed property from his father he disputed Peter's claims thereto, maintaining that his own family had always occupied the said parcel.

22. **RW1** told the Court that deceased herein was his elder brother, both children of Waithera; that their father had ten acres which he had divided between his three wives each receiving three acres but the extra acre went to Waithera as the first wife; and that Waithera also bought an extra acre making her share five acres which share was registered in the deceased's name to hold in trust for their house. He defended the judgment by which the court awarded him and Nyakio each a half portion of the disputed property. In his view, the Applicant, and others in Nyakio's family should pursue their share from Grace Nyakio. He maintained during cross-examination that all the beneficiaries were involved in the succession proceedings and that the deceased herein had held the disputed property in trust for the both of them, as their other Stanley Githinji received from their father some two acres at Rungiri. Regarding the dispute between the deceased and himself, **RW1** said it arose because the deceased herein proposed to give him one acre rather than 2.5 acres of the disputed property.

23. **RW2** the retired assistant chief Gikambura testified concerning his involvement in attempts to resolve the said dispute. He asserted that Peter is entitled to was half of the disputed property because their other sibling received another parcel of land elsewhere. **RW3**, a stepbrother to Peter and the deceased herein testified as follows. That the deceased received the title in respect of the disputed property to hold in trust for the house of Waithera; that the parcel in dispute should be distributed equally between the deceased herein and Peter as ordered by the Court.

24. Nyakio was the last witness testifying as **RW4**. Her evidence was that the three the wives of **Mburu Nduma** received three acres each and that the deceased herein had already distributed this share to his three brothers each receiving one acre; and that Peter had taken possession of his acre, now separate from the disputed property. According to her, the deceased herein subsequently acquired more of own land making up the total of 5 acres which comprises the disputed property. She agreed that the Applicant, Veronica Njeri Mburu and other beneficiaries are entitled to share in the estate but not Peter who had already received his one acre and had been assisted to purchase six acres of land at Loitokitok where he resides.

25. The trial then closed, and parties were directed to file their submissions. Only the Applicants appear to have complied by filing submissions on 12/08/2020.

26. The Applicant's submissions are as follows. It was contended that the signatures in the summons to confirm grant allowed by Musyoka J was based on forged signatures of the beneficiaries, such as Veronica Njeri Mburu, and two sons of the deceased herein who are mentally challenged. Counsel argued that the failure by Peter and Nyakio to notify and obtain the consents of all the beneficiaries of the estate rendered the proceedings to obtain grant defective. Therefore, the grant ought to be revoked, the confirmed grant cancelled, and any transmissions nullified to pave way for property to revert back to the deceased's name and for fair and final distribution. Reliance was placed on the cases of **In re Estate of Wahome Mwenje Ngonoro (deceased) (2016) eKLR** and **In re Estate of Julius Ndubi Javan (deceased) (2018) eKLR** where grants were revoked on account of failure to obtain beneficiary consent and non-disclosure of material facts.

27. The summons for consideration is premised on Section 76 of the Law of Succession Act which provides that:

**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)...**

**or**

**(e)..."**

28. The key grievance raised by the Applicant and her witnesses also beneficiaries, is that they and other beneficiaries to the estate of the deceased herein were not consulted or involved in the succession process and that their existence was concealed from the court. They complained that their consent to the summons to confirm the grant was never sought; that as a result they were disinherited. They blame Nyakio and Peter for this debacle.

29. There is no dispute that during his lifetime, the deceased and his wife Nyakio had several children including:

- (a) Godfrey Mburu Nduma
- (b) James Ngige Waiganjo
- (c) Francis Kinuthia Waiganjo
- (d) Margaret Wambui Waiganjo
- (e) Alexander Mungai
- (e) Jane Waithira Ndungu
- (f) Rose Nduta Waiganjo
- (g) Hilda Wanjiku Waiganjo
- (h) Humphrey Mboroi Waiganjo.

30. It appears that by the time the intestate herein died, several of these children including those listed at item (a), (b), (e), (g), (h) above had predeceased him or died prior to the filing of the cause. The Applicant herein veronica Njeri Mburu (**PW1**) and Jane Njeri (**PW2**) are the widows of the sons listed in item (a) and (b) above. The letter dated 1<sup>st</sup> December, 2006 authored by the Chief Karai Location and filed with the petition by Nyakio in 2007 listed the widow and nine children or widows of those deceased. It also listed one Mary Muchiku Muroki as those surviving the deceased. In the petition itself, Nyakio listed 9 children together with widows of those deceased and included Mary Muchiku Murhoki then for the first time indicated as a widow.

31. **PW1** and **PW2** are listed in that petition as daughters of the deceased. While the evidence of **PW1** and **PW2** was rivetted on the consent to the confirmation of grant which they dismissed as a forgery, they were silent on the consent to making a grant initially filed with Nyakio's petition. The said consent dated 2<sup>nd</sup> December, 2006 contains the signatures of Francis Kinuthia Waiganjo, Margaret Wambui Waiganjo, **PW1**, **PW2**, Nduta Mungai and Humphrey Mboroi. Thus, the only presumably living child beneficiary of the home who did not sign that consent is **Jane Waithira Ndung'u**.

32. Therefore, **PW1** and **PW2** together with their witnesses cannot be believed when they claim that they were unaware of, not consulted, involved, or listed as beneficiaries in the petition by Nyakio. Equally, the petition filed by Peter listed Nyakio, Peter, Francis Kinuthia, Humphrey Mboroi, Margaret Wambui, **PW1** and **PW2**, Anne Nduta, Teresiah Wanjiru, Jane Waithera as those who survived the deceased in their capacities as his widow (Nyakio) Peter (brother) and his children and/or the widows of deceased children. A letter dated 4/10/2004 filed with the petition and authored by the Chief Karai Location listed these persons and others such as Henry Ndung'u (deceased son), Jane Njeri Ngige (**PW2**), Rose Nduta (deceased) and Hilda Wanjiru (deceased) as the beneficiaries of the deceased herein.

33. Significantly the above letter, unlike the one filed with Nyakio's petition and dated 1<sup>st</sup> December 2006, does not include Mary Muchiku Muroki as a beneficiary. During her evidence before me, Nyakio was to admit that the said person had allegedly purchased from her, one asset of the estate, namely land parcel **LR No. Nachu/Ndacha/180**. I will return to this alleged sale later. Peter's petition filed together with a citation to accept or refuse grant were served on the occupants in Nyakio's house who confirmed they were her children, on 18/12/2004 (see affidavit of service filed on 5/05/2005), and after the grant issued to Peter, the summons to confirm grant served on the beneficiaries subsequently. On 20/1/2006 the court having found that the "survivors of the deceased" had been duly served but were absent proceeded to confirm the grant made to Peter. Ditto for the subsequent application by Peter to nullify the title in the name of the deceased herein, allowed on 15/11/2007, upon the court finding that service had been effected on Nyakio.

34. Therefore, even if the present Applicant and allied beneficiaries did not participate in the cause filed by Peter, they were listed as beneficiaries and served with citation and petition and therefore aware of the cause. Beyond blaming the two administrators, they have not explained why they did not follow up the two causes.

35. Notwithstanding the foregoing, court is of the view that their complaints with regard to the summons to confirm the grant dated 22<sup>nd</sup> November, 2007 which was the basis of the judgment of Musyoka J, have merit. Both **PW1** and **PW2** denied having executed the consent to confirm the grant dated 13/12/2007 in Nyakio's petition and also stated that two of the signatories, namely Francis Kinuthia Waiganjo and Humphrey Mboroi Waiganjo were mentally incapacitated, a fact admitted by both Peter and Nyakio.

36. Although no expert evidence was called to confirm the veracity of the signatures disputed by **PW1** and **PW2** the signature of **PW1** on the consent to making grant (dated 2/12/2006) and that on the consent to confirmation of grant (dated 13/09/2007) are patently different even on a cursory lay man's examination. Ditto for the signature of **PW2** on the two documents. Infact the latter signature on the consent to confirmation of grant (dated 13/09/2007) is endorsed beside two names, Jane Njeri Ngigi (**PW2**) and Nduta Muigai. Whose signature, is it? Further the said signature bears an uncanny resemblance to the signature below it purported to have been endorsed by Jane Waithera Ndung'u.

37. As stated earlier, the proceedings conducted in respect of the application to confirm the grant and Peter's protest thereto filed on 20/06/2008 were confined to Peter and Nyakio after the revocation of the initial two grants on 31<sup>st</sup> January, 2014. Neither **PW1** nor **PW2** and their witnesses explained why they did not follow up at least on the petition filed by Nyakio in 2007. Had they done so they would have learned about the summons to confirm the grant and proceedings taken therein. On the other hand, it is not clear why Nyakio kept the ongoing proceedings after 31<sup>st</sup> January 2014 away from her children, electing to face Peter alone. During the proceedings before this Court, she conceded that all her children are entitled to a share of their father's estate even though she, like other witnesses supporting the application were keen to demonstrate that Peter was not entitled to 2 ½ acres of land parcel **LR No. Karai/Gikambura/677** but to one acre as the rest of the disputed property belonged to the deceased herein.

38. However, neither **PW1**, **2** and **3** led any direct evidence regarding the said land as all of them referred to the deceased or their parents or Nyakio as the source of their information. Nyakio herself relied on what her late husband allegedly told her about the land. No document was tendered by the Applicant and her witnesses to authenticate their claims that Peter was only entitled to one acre of the disputed parcel, because he was assisted by the family to acquire his Loitokitok land. Indeed, Nyakio went further than other witnesses by stating, without proof, that the entire 5-acre piece of land belonged to her husband and that Peter already had a separate 1-acre piece which was his inheritance.

39. Nyakio had the opportunity to lead this evidence before Musyoka J but did not. Her lawyer participated in that hearing but did not call her as a witness. Nyakio failed to bring on board all the beneficiaries of the deceased to participate in the cause and to challenge the claims by Peter. It seemed to this court that apart from prosecuting their own claims, **PW1** to **PW3** were also prosecuting Nyakio's case, which was already determined, but little or no credible evidence to support themselves. Peter on the other hand called strong evidence to counter these claims. As for **PW1 –PW3**, their evidence concerning Peter's claim is based on hearsay and conjecture at best. On that ground the Applicants have woefully failed. It is too late in the day for Nyakio to re-open the case before Musyoka J. If Nyakio is unhappy with the decision awarding Peter half of the disputed land parcel, she was entitled to appeal the decision.

40. That said, it is my view both Nyakio and Peter failed as administrators to comply with orders to file a fresh application to confirm the grant as ordered on 31/01/2004 but secondly, they failed to involve all the beneficiaries in the hearing before Musyoka J. As the person representing the house of the deceased herein, Nyakio must take the highest level of the blame for excluding her own children and their widows in proceedings after 31.01.2014, and even earlier in her own petition while filing the summons to confirm the grant dated 22<sup>nd</sup> November, 2007 and filed on 13/12/2007. Thus, in so far as the decision of Musyoka J on the distribution of the disputed parcel between Peter and Nyakio is concerned, the court is not persuaded that the Applicant's and Nyakio's complaints can be entertained.

41. However, in so far as the other properties of the deceased herein are concerned Nyakio's admitted sale and gifting thereof to Mary Muchiku Muroki and Margaret Wambui Waiganjo, respectively did not have the consent of the other beneficiaries of the estate of the deceased herein. The consent order between Nyakio and Peter was of no value as Peter had no interest or claim to these two properties which ought to have been shared with the consent of the beneficiaries of the estate of George Waiganjo Mburu. The consent was based on the concealment from the Court of the fact and interest of other persons beneficiaries entitled to the said assets by Nyakio and her advocate.

42. Before this court, Nyakio claimed that she gave the land parcel LR. No. Karai/Gikambura/705 to her daughter Margaret Wambui Waiganjo because she supported her financially. As regards the alleged sale of land parcel LR No. Nachu/Ndacha/180 to Mary Muchiku Muroki, the earliest filings by Nyakio indicate that the said person was a widow and later in the summons to confirm grant, as a purchaser. The Chief's letter in Nyakio's petition includes the alleged purchaser among those who survived the deceased. During her evidence Nyakio stated that she sold the said property to enable her file the cause and support herself. The subsequent consent before Musyoka J was therefore recorded after the fact. These two parcels were the property of the deceased and there were other potentially entitled beneficiaries who were evidently not consulted. Nyakio had no authority to gift or sell any assets of the deceased or to distribute them before confirmation of the grant. See section 55 of the Law of Succession Act.

43. Her admitted actions amount to intermeddling and cannot be cured by the consent of 1/03/2016, recorded behind the backs of other beneficiaries. In these circumstances, the Applicant's complaint that she and others were effectively disinherited are not farfetched. The actions of Nyakio regarding the two disposed assets especially are illegal and fraudulent and the grant obtained to effectively cement and sanitize the said illegality and conceal fraud cannot stand. In the circumstances, the court will find that the application dated 16<sup>th</sup> April, 2018 is allowed in the following terms:

(a) The certificate of confirmed grant issued herein and later amended, dated 12<sup>th</sup> May, 2017 is hereby revoked. However, for the avoidance of doubt the revocation of the certificate of confirmation of grant does not affect the determination by Musyoka J. that Peter is entitled to half share (read 2.5 acres) of land parcel **LR no. Karai/Gikambura/677**.

(b) The court hereby nullifies any title purportedly obtained by Margaret Wambui Waiganjo and Mary Muchiku Muroki in respect of the assets of the deceased, namely **LR. No. Karai/Gikambura/705** and **LR No. Nachu/Ndacha/180**, respectively on account of the consent and grant confirmed earlier herein. These properties will revert into the name of the deceased to pave way for proper

distribution. Equally, pending final distribution, an entry will be made against **Title No. Karai/Gikambura/677 to the effect that Peter Ndung'u Mburu who is registered since 2006 as sole proprietor, holds title in trust for himself and George Waiganjo Mburu, the deceased herein in equal shares.**

(c) The Court directs that within 60 days of today's date, Nyakio and Peter jointly file a fresh summons to confirm the grant issued to them on 31/01/2014, and list all the children of the deceased, and if deceased, their spouse or child representing their estate.

(d) The summons in (c) above must indicate the mode of distribution in respect of:

- i) Half the share (read 2.5 acres) of **LR No. Karai/Gikambura/677** due to the deceased herein;
- ii) Land parcel LR No. Karai/Gikambura/705;
- iii) Land Parcel LR No. Nachu/Ndacha/180.

(e) The summons in (c) above will reflect that the other half portion (read 2.5 acres) of the land parcel **LR No. Karai/Gikambura/677** is the share due to **Peter Ndung'u Mburu.**

(f) For the avoidance of doubt, the portion due to Peter Ndung'u Mburu in (e) above will not be subject to the consent of Nyakio and her family but concerning the assets forming the estate of **George Waiganjo Mburu**, the consents of all persons beneficially entitled are to be obtained.

(g) Further, in the event that after 30 days of today's date, the administrators Peter and Nyakio are unable to agree on or to file a joint summons to confirm the grant, or that the beneficiaries in the house of **George Waiganjo Mburu**, are unable to agree on proposed mode of distribution any one of the two administrators herein will be at liberty to file the summons to confirm the grant, effect service thereof on all the beneficiaries living and/or persons representing the estates of deceased beneficiaries and file a return of service.

44. In view of the nature of this dispute, parties will bear their own costs. The court notes that the summons dated 16/04/2018 determined by this ruling is a replica of the application earlier brought jointly by **PW1** and **PW2** and filed on 2<sup>nd</sup> October, 2017. The same is still outstanding. By virtue of this determination, the application dated 2<sup>nd</sup> October 2017 is declared to be spent.

**Delivered and signed electronically on 13<sup>th</sup> Day of May 2021**

**C. MEOLI**

**JUDGE**

**In the Presence of:**

**For the Applicant: Mr. Ayieko.**

**For the Administrator Grace Nyakio Waiganjo: N/A.**

**For the Administrator Peter Ndung'u Mburu: Mr Mitiambo.**

**Court Assistant: Kevin Ndege.**