



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1291 OF 2017**  
**IN THE MATTER OF THE ESTATE OF CHARLES MUTHIKE GACHOKI - (DECEASED)**

NELIUS WANGUI MUTHIKE.....APPLICANT

-VERSUS-

LYDIAH WANJIKU MUTHIKE.....RESPONDENT

**RULING**

1. The deceased Charles Muthike Gachoki died intestate on 8<sup>th</sup> May 2016. On 23<sup>rd</sup> October 2017 his widow Lydia Wanjiku Muthike (the respondent) petitioned this court for the grant of letters of administration intestate. In the affidavit in support of the petition the only other beneficiary she indicted was her daughter Iddah Karimi Muthike. The grant was issued on 10<sup>th</sup> April 2018, and confirmed on 22<sup>nd</sup> October 2018. She got LR No. Kajiado/Kaputiei North/37903, Plot No. Noonkopir T. Centre Plot 2364, Plot No. 105 Bahati Nairobi and Plot No. 97 Bahati Nairobi absolutely. Her daughter got LR No. Baragwi/Guama/2529, Safaricom shares, Equity Bank account proceeds, Cooperative Bank proceeds, Barclays Bank proceeds and Plot No. 56 Kianyaga.
2. In the instant application dated 13<sup>th</sup> November 2018, the applicant Nelius Wangui Muthike sought the revocation of the grant as confirmed on the basis that her and her sister Alice Wambui Muthike were daughters of the deceased whom the respondent had fraudulently excluded from the proceedings leading to the grant and who had, as a result, been disinherited. She produced a birth certificate for each of them to show that the deceased was their father.
3. The respondent responded that she had procedurally and legally obtained the grant, as she and her daughter were the only beneficiaries of the deceased. She challenged the validity of the birth certificates, saying that they had been produced 23 years later. She stated that a DNA test was the only way the applicant's paternity could be known. The applicant and her sister have no problem with a DNA test. The respondent deponed that throughout her life the deceased did not tell her he had another family, or child.
4. The applicant complained that the respondent had begun disposing off the estate of the deceased. The respondent responded that she was doing this because she had a confirmed grant.
5. The applicant's case was that the respondent knew her and her sister to be children of the deceased, and yet had, without reference to them, obtained the grant and had it confirmed.
6. There is no dispute that under **section 76** of the **Law of Succession Act (Cap 160)**, a grant, whether confirmed or not, may be revoked by the court under any of the grounds in (a), (b), (c) and (d).
7. It is common ground that there was no reference to the applicant and her sister when the respondent petitioned for the grant, and subsequently distributed the deceased's estate to herself and her daughter. Under **section 51(2)(g)** of the **Act**, a petition for grant of letters of administration intestate should include the names and addresses of the children of the deceased. Under **section 71** of the **Act**, an applicant seeking the confirmation of the grant has to include in the supporting affidavit all the persons beneficially entitled to the estate. There is no indication that either the applicant or her sister had renounced their claim to the grant or to the estate.
8. The respondent justified her actions by saying that the applicant and her sister were not known to her, and that she did not know the deceased had another family. The applicant's case is that they were known to her, and that there was a time they stayed with the deceased at Tudor in Mombasa.
9. There are the birth certificates, one for the applicant and the other for her sister. In **BKN & Another –v- TNW [2019] EKL**, the Court of Appeal, while dealing with the issue of a birth certificate, made reference to section 12 of the **Registration of Births and Deaths Act** on how the deceased's name came to feature in the birth certificate in that case. The section provides that: -

**“No person shall be entered in the register as the father of any child except either at the joint request of the father and mother or upon the production to the registrar of such evidence as he may require that the father and mother were married**

**according to law or, in accordance with some recognized custom.”**

10. The deceased died on 8<sup>th</sup> May 2016. The birth of the applicant was on 26<sup>th</sup> November 1986. It was registered on 17<sup>th</sup> October 2011. Alice Wambui was born on 7<sup>th</sup> September 1990. The birth was registered on 24<sup>th</sup> October 2013. In either case, the deceased was alive. According to the **Act**, the Registrar was satisfied before he entered the deceased in the register as the father. Either there was a joint request by the deceased and the mother of the children, or some other evidence was given to him that satisfied him that the deceased was the father. Once a birth certificate has been produced, it is *prima facie* conclusive evidence of its contents. I accept that the applicant and her sister were daughters of the deceased.

11. That being the case, the applicant and her sister, who had not renounced their claim to the grant and the estate of the deceased, were entitled to know about the petition and to participate in the same. Their consent ought to have been sought and obtained during the petition and during the confirmation for the grant. It follows that the proceedings leading to the grant were defective in substance, and the exclusion of the two from the process was an act of bad faith intended to disinherit them.

12. In conclusion, I revoke the grant issued on 10<sup>th</sup> April 2018, and set aside the certificate of confirmation issued on 22<sup>nd</sup> October 2018. All the property of the estate shall revert into the name of the deceased.

13. So that the matter can proceed, a fresh joint grant shall issue in the name of the respondent Lydia Wanjiku Muthike and the applicant Nelius Wangui Muthike. Both, or any of them, shall within 60 days apply to have the grant confirmed.

14. Costs shall be in the cause.

**DATED AND DELIVERED AT NAIROBI THIS 9TH NOVEMBER 2021.**

**A.O. MUCHELULE**

**JUDGE**