



REPUBLIC OF KENYA

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1552 OF 2002**

**IN THE MATTER OF THE ESTATE OF NG'ANG'A MUCHARA (DECEASED)**

**PETER KINUTHIA WAGACHA.....APPLICANT**

**VERSUS**

**JASINTER WANJIKU.....1<sup>ST</sup>RESPONDENT**

**GODFREY NGANGA.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Application coming for consideration in this Ruling is the Summons for Revocation dated 29.9.2017 seeking the following orders:

- (i) **THAT this matter be certified urgent and the same be heard ex-parte in the first instance.(Spent)**
- (ii) **THAT leave be granted to the Applicant to serve the Respondents through the Respondents las known address being P.O Box 39 -50408, KAMURIA, TESO.**
- (iii) **THAT the grant of letters of administration issued to the Respondent in THIKA CMC Succession Cause No. 291 of 2004 be revoked.**
- (iv) **THAT the Certificate of Confirmation of grant issued to the Respondents in Thika CMCC Succession Cause No. 291 of 2004 be nullified.**
- (v) **THAT the costs of this Application be provided for.**

2. The Application is supported by the Affidavit of the Applicant PETER KINUTHIA WAGACHA in which he deposed as follows:

**(i) THAT he is the son of SIMON WAGACHA KINUTHIA who died on 13.12.1998 intestate leaving three beneficiaries as follows:**

- (a) JANE NJERI WAGACHA – WIDOW**
- (b) PETER KINUTHIA WAGACHA – SON**
- (c) JOHN NJOROGE WAGACHA – SON.**

**(ii) THAT the deceased left one Property Land Parcel No. LOC 16/KIGORO/68.**

**(iii) THAT on 27.1.2004 a grant was issued to the Applicant and his mother in Nairobi Succession Cause No. 1552 of 2002 ad the same was confirmed and the land distributed to the above beneficiaries.**

**(iv) THAT unknown to them the Respondents had obtained letters of administration in THIKA SUCCESSION CAUSE NO. 291 of 2004 and the same was confirmed and the property distributed.**

**(v) THAT the Thika Succession Cause in effect overturned the Nairobi Succession Cause.**

3. The Applicant filed a Supplementary Affidavit sworn on 20.11.2019 in which he further deposed as follows:

**(i) THAT on 7.11.2002 one JAMES KARIUKI NG'ANG'A filed a suit being THIKA SPMCC NO. 1006 of 2002 claiming that his father NG'ANG'A MUCHARA was the owner of the suit property herein.**

**(ii) THAT on 2.10.2003 Judgment was delivered in favour of JAMES KARIUKI NG'ANG'A and the Applicant appealed against the said Judgment.**

**(iii) THAT the Appeal being NAIROBI HIGH COURT CIVIL APPEAL NO. 642 OF 2003 was determined on 7.12.2016 and the Judgment in THIKA SPMCC NO. 1006 OF 2002 was set aside.**

**(iv) THAT he is now seeking orders that the said land be registered in the names of the beneficiaries as per the Certificate of Confirmation in this case (SC No. 1552 of 2002).**

4. The summons dated 29.9.2017 were served upon the Respondents but they did not file any response or appear in Court to oppose the same.

5. The Applicant filed written submissions in the summons for revocation which I have duly considered.

6. I find that the grant that was issued in Thika CMC Succession Cause No. 291 of 2004 was fraudulently issued and further that the rightful beneficiaries were not aware of the issuance of the said grant and Certificate of Confirmation.

7. The circumstances in which a grant may be revoked or annulled are set out in **section 76** of the Law of Succession Act as follows:

*'76 Revocation or annulment of grant 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.'*

8. I accordingly allow the Summons for revocation dated 29.9.2017 in the following terms:

**(i) THAT the Grant of Letters of Administration issued in THIKA CMC SUCCESSION CAUSE NO. 291 OF 2004 and Confirmed on 28.11.2008 and amended on 13.5.2009 be and are hereby revoked and nullified as the same were fraudulently issued.**

**(ii) THAT the grant of letters of Administration had already been issued in this case on 24.9.2002 and confirmed on 27.1.2004 and the property already distributed to the rightful beneficiaries who are as follows:**

**(a) JANE NJERI WAGACHA**

**(b) PETER KINUTHIA WAGACHA**

**(c) JOHN NJOROGI WAGACHA**

**(iii) THAT the suit property herein LOC 16/KIGORO/68 to be distributed to the beneficiaries as per the Certificate of**

**Confirmation dated 27.1.2004.**

**(iv) THAT the Land Registrar, Thika be and is hereby directed to remove any Cautions and transfer the said properties.**

**(v) THAT the Deputy Registrar of this Court be and is hereby directed to sign any documents if the Respondents are not available to sign any required documents**

**(vi) THAT the Applicant to bear his own costs of the Summons for Revocation dated 29.9.2017.**

**DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 14<sup>TH</sup> DAY OF FEBRUARY, 2020**

**ASENATH ONGERI**

**JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.**