



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 578 OF 2011

(FROM KARATINA SENIOR RESIDENT MAGISTRATE SUCCESSION CAUSE NO.24 OF 2005)

IN THE MATTER OF THE ESTATE OF THE LATE MARY WABIRI MATHENGE (DECEASED)

NANCY WAMBUI MATHENGE.....APPLICANT

VERSUS

SERAH NYAKIERE MATHENGE.....1ST RESPONDENT

EVANS MWARIRI MATHENGE.....2ND RESPONDENT

RULING

1. The estate relates to the late **MARY WABIRI MATHENGE (DECEASED)** who died on the 24th April, 1998 at Karatina Hospital in Nyeri County. There are two (2) identifiable parcels of land that are the subject matter of this cause and known as Parcel No. **Iriaini/Kiaguthu/291** measuring approximately 1.62 hectares and **Iriaini/Gatundu/299** measuring approximately 11.9 acres.
2. The Deceased died intestate and left the following surviving him namely;
 - (i) Serah Nyakiere Mathenge - co-wife
 - (ii) Evans Mwariri Mathenge - son
3. This succession cause was instituted by way of a Citation that was filed by Serah Nyakiere Mathenge, the 1st Respondent, on the 10th May 2005 at the Karatina Senior Magistrates Court vide Succession Cause No.24 of 2005; she notified the applicant, the 2nd respondent, one Ester Wanjiru and one Njoki Mundia that a grant of letters of administration to the deceased's estate would be issued by the court to her in default of their acceptance or refusal to extract the said letters;
4. The Grant was thereafter issued to Serah on the 24/06/2010 and was confirmed on the 23/02/2011; the applicant then filed an under the provisions of Section 76 of the Law of Succession Act and Rule 44 of the Probate and Administration Rules application seeking orders for the Revocation of the Grant on the grounds that it was obtained fraudulently by making of a false statement; that the person to whom the Grant was issued failed to proceed diligently with the administration of the estate;
5. Directions were taken on the 7/11/2019 that the matter proceed for hearing by way of '**viva voce**' evidence;
6. At the hearing hereof only the applicant and her witnesses gave evidence; the 2nd respondent was duly served with a hearing notice and was present at the hearing; after the applicant closed her case the 2nd respondent opted not to adduce any evidence as the applicant and the witnesses had all stated that there had no issues with the 2nd respondent and his inheritance and that the cause was substantially against the 1st respondent;
7. Upon perusal of the court file this court notes that the hearing date was taken in court in the absence of both respondents; there was a direction made by the court that a Hearing Notice was to issue and be served on both respondents; the court record reflects that only the 2nd respondent was duly served with a Hearing Notice and there is an Affidavit of Service dated 10/12/2019 in support of effected service;
8. In the circumstances this court deems it proper that the pending ruling be deferred and that the 1st respondent be given a chance to state her

case before a ruling is rendered; the matter shall be mentioned on the 15/10/2020 for purposes of fixing a further hearing date;

It is so ordered accordingly.

Dated, Signed and Delivered Electronically at Nyeri due to Pandemic this 1st day of October, 2020.

HON. A. MSHILA

JUDGE