



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

MISC. SUCC. NO. 13 OF 2017

IN THE MATTER OF THE ESTATE OF MWANIKI KIGUNDU (DCD)

LUCY WAKARIA NJOKAAPPLICANT

V E R S U S

FREDRICK NJANJA MWANIKIRESPONDENT

RULING

This matter relates to the estate of Mwaniki Kigundu (deceased) who died on 22/8/02. Temporary Letters of Administration were issued to Fredrick Njanja Mwaniki and were confirmed on 13/9/2017. The distribution of the estate of the deceased comprised in two land parcels was ordered as follows:-

<u>Name</u>	<u>Description of Property</u>	<u>Share of Heirs</u>
(a) FREDRICK NJANJA MWANIKI	BARAGWE/KARIRU/714	0.82 ACRES
(b) CONSOLATA WAGUAMA JAMES	“ “ “	0.82 ACRES
(c) SICILY WANGUI MWANIKI	“ “ “	0.82 ACRES
(d) PETER M. MWANIKI	“ “ “	0.82 ACRES.
(e) DAVID KARIUKI MWANIKI	“ “ “	0.82 ACRES
(a) FREDRICK NJANJA MWANIKI	NGARIAMA/LOWER NGARIAMA/1358	0.5 ACRES
(b) CONSOLATA WAGUAMA JAMES	“ “ “ “	0.5 ACRES
(c) PETER M. MWANIKI	“ “ “ “	0.5 ACRES
(d) DAVID KARIUKI MWANIKI	“ “ “ “	0.5 ACRES

The applicant Lucy Wakaria Njoka has now filed a summons for revocation and or annulment grant under **Section 76 of the Law of Succession Act.**

It is the contention by the applicant that the grant was obtained fraudulently by making of false statements or by concealment from court of something material to the case by the petitioner.

The application is based on the grounds that –

a) The proceedings to obtain the said grant were defective in substance.

b) That the Petitioner/Respondent herein filed the Succession Cause No. 193 of 2016 at Gichugu secretly without my consent.

c) That I was left out yet the deceased was my grandfather and my late mother was not given a share of his father's estate yet we live a very poor life at Mwea with my siblings.

d) That it is mete and just to allow this application.

The application is also supported by the applicant's affidavit sworn on 5/12/17. She depones that she is a niece to the late Mwaniki Kigundu – (sic) as her mother was a daughter of the deceased. Her mother is deceased. The petitioner filed Succession Cause No. 193/2016 at Gichugu secretly without her consent. The petitioner failed to include her as a beneficiary. She prays that she be included as a beneficiary and the estate be distributed to the beneficiaries in equal shares.

She proposed that the deceased's estates **Baragwe/Kariru/714** and **Ngariama/Lower-Ngariama/1358** be share equally among the following:

- 1. Fredrick Njanja Mwaniki - son***
- 2. Sicily Wangui Mwaniki – daughter***
- 3. Peter M. Mwaniki – son***
- 4. David Kariuki Mwaniki – son***
- 5. Consolata Waguama Mwaniki – daughter***
- 6. Salavina Wathimu Mwaniki – daughter***
- 7. Lucy wakaria Njoka – niece***

The petitioner was duly served with the application and his Advocate A. N. Chomba filed Notice of Appointment. When the matter came up in court for the petitioner to confirm filing a reply, he informed the court that he was not opposed to the application for revocation. From the grounds in support of the application, the applicant is a grandchild of the deceased, not a niece of the deceased as deponed in the affidavit. The petitioner conceded to the application and did not oppose the application for revocation of the grant. There is therefore no issue for determination.

I will allow the application and order that the grant which was confirmed on 13/9/17 be revoked.

I make no orders as to costs.

Dated at Kerugoya this 15th day of February 2019.

L. W. GITARI

JUDGE