



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO 146 OF 2008**

**In The Matter Of The Estate Of Jacob M'ikiugu M'ringera (Deceased)**

**ANDERSON MBURUGU M'RINGERA.... 1<sup>ST</sup> PETITIONER**

**JULIA NAITORE MWORIA..... 2<sup>ND</sup> PETITIONER**

**VERSUS**

**VIRGINIA MAKENA NTIRITU.....OBJECTOR**

**RULING**

1. Before me is a Summon for Revocation and or Annulment of Grant which is dated 9<sup>th</sup> December 2018. It seeks
  - 1) **Revocation or Annulment of grant issued to Aderson Mburugu M'Ringera and Julia Naitore on 8<sup>th</sup> July 2009.**
  - 2) **Cancellation of entries made in the register in respect of ABOTHUGUCHI/KATHERI/910 and revert back into the name of JACOB M'IKUNGU M'RINGERA (the deceased)**
  - 3) **Inhibitions to be registered in respect to the new numbers namely ABOTHUGUCHI/KATHERI/4072, ABOTHUGUCHI/KATHERI/4073 and ABOTHUGUCHI/KATHERI/4074**
2. The application was premised on grounds set out in the application and the supporting affidavit and supplementary affidavit by Virginia Makena Ntiritu where it was stated in brief;
  - a. **That she is married to Fredrick Mwiti (deceased) son to Jacob M'Ikiungu.**
  - b. **That her husband died in 2001 and left her and her two children Faith Kathambi and Caroline Karoki on the suit land.**
  - c. **That she occupies about 2 acres while Anderson Mburugu occupies 2 acres and his sisters have leased about I acre.**
  - d. **That the petitioners neither disclosed nor requested for her consent**
  - e. **That the grant has been confirmed and land subdivided into parcels numbers ABOTHUGUCHI/KATHERI/4072, 4073 and 4074.**
  - f. **That she was not given any share despite being entitled to and having lived on the suit land for over 14 years**
  - g. **That the petitioners have completely denied her rights because of her gender and are now issuing threats and notices for her to vacate the suit land**
  - h. **That they want to sell the land and have invited buyers.**
  - i. **That her husband was to get 2 acres, the petitioner 2 acres and the daughters 1 acre.**
3. This application was opposed by Anderson Mburugu M'Ringera who filled an affidavit on 28<sup>th</sup> February 2011. He claimed that the property comprising the estate was originally the property of his late mother and it was registered under the name of his late brother who was survived by his son, Fredrick Mwiti. Fredrick had a daughter with the objector named Caroline Karoki Mwiti. After the demise of his

nephew the objector deserted the homestead and was nowhere to be consulted. According to hi, the objector wants the property registered in trust for Caroline to be transferred to herself so that she can dispose of it and disappear once again.

## **ANALYSIS AND DETERMINATION**

4. Section 76 of the Law of Succession Act CAP 160 of the Laws of Kenya provides the threshold for revocation or annulment of grant. It states 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.*

5. Revelation coming up is that late Fredrick Mwiti was the only son of the deceased. Significant to this application is that, the petitioner stated that he did not leave out the granddaughter of the deceased for he listed Caroline Mwiti in the affidavit in support of confirmation of grant. Caroline is the daughter of the late Fredrick Mwiti. Yet, the petitioners, Anderson Mburugu and Julia Mworira did not include him as a dependant. The objector was also not informed by the petitioners of these proceedings. The petitioners have attempted to argue that the objector deserted the homestead and hence could not locate her to inform her of these proceedings. Evidence show that the petitioner served the objector with a notice to vacate. The sum total of these matters supports the conclusion that the grant was obtained by concealment of fact material to the case. In such circumstances the grant herein is a perfect candidate for revocation. See the case of **SAMUEL WAFULA WASIKE -vs- HUDSON SIMIYU WAFULA CA NO.161 OF 1993**(Kwach, Omolo and Tunoi JJA) that:-

**“A grant obtained on the strength of false claims, without obtaining the consent of persons who had prior right to the grant and on the basis of facts concealed from the court, is liable to revocation.”**

6. As a consequence, I find that the objector has satisfied Section 76 of the Law of Succession Act. The application is granted in the following terms;

**1. The grant of the letters of administration issued and confirmed on 9<sup>th</sup> September 2008 and 8<sup>th</sup> July 2009 respectively are hereby revoked**

**2. That a fresh grant of letters of Administration are issued to Virginia Makena Ntiritu, Anderson Mburugu M'Ringera and Julia Naitore Mworira.**

**3. That the petitioners shall file and serve a Summons for Confirmation of Grant within 14 days which failing, the Objector shall file and serve a Summons for Confirmation of Grant in 14 days of the default. Persons being served with the Summons shall file their respective modes of distribution of ABITHUGUCHI/ KATHERI/ 910 within 14 days thereof.**

**4. persons to be served include:-**

**a. The beneficiaries of the estate of late Fredrick Mwiti**

**b. Marion Karegi M'Kirigia**

**c. Grace Nkatha Nkando**

- d. Maritha Ringiri Rimberia
- e. Julia Naitore Mworira
- f. Esther Gacoga Kangethe
- g. Anderson Mburugu M'Ringera

5. Meanwhile, the petitioners shall not evict the objector from the estate property. The petitioners by themselves or through or their servants or agents or employees or representatives or assignees shall not sell or dispose of or lease or deal with the estate property in any manner whatsoever that will dissipate the estate property.

6. No order as to costs.

Dated, signed and delivered in open court at Meru this 11<sup>th</sup> day of February, 2019.

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**F. GIKONYO**

**JUDGE**

In presence of

Kithinji for Mrs Kaume for Objector

Objector present

Arimi for petitioner - absent

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**F. GIKONYO**

**JUDGE**