**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT EMBU**

**SUCCESSION CAUSE NO. 620 OF 2013**

**IN THE MATTER OF THE ESTATE OF NJERU NJAGI (DECEASED)**

**ANNETE WANDIA NJERU.....1ST APPLICANT**

**ISAAC MUGAMBI NJERU.....2ND APPLICANT**

**ZAKARY NJAGI NJERU.....3RD APPLICANT**

**GRACE MURUGI NJERU.....4TH APPLICANT**

**LYDIA WANJIRU NJERU.....5TH APPLICANT**

**VERSUS**

**IRENE WAITHIRA MBUGUAH.....RESPONDENT**

**R U L I N G**

**A. Introduction**

**1.** This ruling is in regard to the summons for revocation of grant dated 20th February 2014. The applicants seek revocation of the letters of administration issued to the respondent on the 27th January 2014 on the grounds that: -

**a)** ***The grant was obtained by means of untrue allegation***

**b)** ***The grant was obtained fraudulently by the making of a false statement or by concealment from court of something material case.***

**c)** ***The proceedings to obtain the grant were defective in substance.***

**2.** The parties gave viva voce evidence and subsequently filed submissions.

**B. Applicants' Case**

**3.** PW1, a daughter of the deceased testified that she did not know the relationship between the deceased and the respondent as the respondent was not a wife the deceased. He was living in Mombasa for the three years prior to his death. She further testified that the respondent did not participate in any event during the deceased's funeral and burial. She testified that she did not authorise nor consent to the respondent filing any petition on behalf of the estate of the deceased neither was she served with any citation.

**4.** In cross examination PW1 identified the respondent in various photos with the deceased. She further testified that some of the deceased's assets were not included form P&A 5. She further testified that the deceased hailed from Gaturi North and not from Kithimu.

**5.** PW2, a brother to the deceased testified that the deceased lived with his family in Gaturi North location of Embu County. He testified that he lived in Kithimu where the respondent also lived and that the respondent was known to him. He corroborated PW1 testimony on the deceased having one wife who was the mother of PW1 and had died.

**Respondent's Case**

**6.** DW1, Chief of Kithimu sub-location testified that he knew the respondent who lived in her sub-location and was one of two wives of the deceased. He testified that DW1 and PW2 helped him come up with the list of beneficiaries to the deceased's estate in the letter he wrote in his position as the Assistant Chief on the 6th August 2013 introducing the respondent as the wife of the deceased.

**7.** He testified that he did not know whether the daughters and sons listed as beneficiaries of the deceased were related to the deceased by blood or not. He further testified that he had known the deceased for more than ten years. He further testified that he did not attend the Uthoni between the deceased and the respondent and could neither remember when it took place but was adamant that it took place at the respondent's parent's home.

**8.** DW2, the respondent testified that the deceased was her husband and that they got married under African customary law in 1997. She testified that the deceased was buried in Muchagori of Gaturi location where the deceased's first wife lived. She further testified that she did not have a marriage certificate as it was not provided in African Customary Law. She testified that she included all the deceased's children in the application for succession and that the deceased had given her name as his wife in Migiki Farmers Society.

**9.** The respondent further testified that her daughter Rahab was not a biological child of the deceased but that the deceased had adopted her. However, she testified that Rahab had since passed on. She testified that her name and Rahab's did not feature in the deceased's eulogy nor is Rahab's name provided as that of the deceased's daughter or sibling to the deceased's children. Further it was her testimony that she did not produce a picture of ruracio (dowry payment) neither did she have a wedding photo.

**10.** DW3, a manager at Mikiki Cooperative Society testified that the deceased was a member of the society and had named the respondent as his nominee. She further admitted in her testimony that the documents she had produced in court lacked the Society's letterhead. She further testified that the respondent was not a valid nominee as the deceased had failed to submit all documents required for validation.

**C. Applicant's Submissions**

**11.** The applicant submitted that the only issue for trial was whether the respondent was the wife of the deceased and if not then the grant of letters of administration given to her must be annulled.

**12.** The applicants' submitted that the respondent had failed to produce any evidence of having contracted a statutory or customary marriage with the deceased and that the circumstances surrounding the relationship between the respondent and the deceased did not give the impression of being husband and wife.

**13.** It was further submitted that as per the evidence on record, all the required conditions for the establishment for the Embu Customary marriage were either not followed or completes. Further, they submitted that the photographs taken during the burial and the members record from Mikiki Farmers Co-operative Society Limited did not give the respondent the "reputation of the wife" of the deceased as envisioned in section 160 (1) of the Marriage Act.

**14.** It was further submitted that Form 38 dated 7/11/2013 was not signed by all persons entitled to administer the estate in equal or greater priority to the petitioner and the respondent ought to have cited all persons entitled, failure to which the grant ought to be annulled as it was obtained fraudulently and/or falsely.

**15.** Further to this, the applicants submitted that the information submitted by the respondent accompanying the petition was false and constituted a concealment of facts from the court, facts which were material to the case.

**D. Respondent's Submissions**

**16.** She submits that the grounds on the face of the summons filed by the applicant reveal that there is no complaint by the applicants that the respondent is not and has never been married to the deceased and therefore had no capacity or rank in priority to file or petition and as such all other grounds fail.

**17.** The respondent submits that when she filed the succession cause, she disclosed and listed all the names of all the children as well as all the properties comprising the estate of the deceased. She further submits that the issuing of citations was not necessary as the applicants did not rank higher in priority or equal the respondent as their step-mother as the persons entitled to the issuance of the Grant.

**18.** She further submitted that she was the 2nd wife of the deceased and that she never intended to disinherit any of the deceased's children and as such she proposed that the grant be rectified and the 1st applicant's name be included as a joint administrator to represent the house of the 1st wife.

**E. Analysis & Determination**

**19.** The issues for determination in this matter are: -

***a.*** **Whether the respondent was married by the deceased and**

***b.*** **Whether the grant issued to the respondent should be revoked**

**20.** The applicants argues that the respondent was not a wife of the deceased and that she applied for the grant of letters of administration in a fraudulent manner whilst concealing material facts from the court. The respondent insists she was the deceased's wife and that she applied

for the letters of grant with the full knowledge of the applicants who refused to participate.

**21.** She insists she married the deceased in a traditional ceremony although she doesn't know whether the deceased paid any dowry. DW1 who testified on behalf of the respondent testified that he did not attend the dowry ceremony between the deceased and the respondent and could neither remember when or whether it took place.

**22. Article 2 (4) of the Constitution of Kenya** recognizes the application of customary law, but with a limitation and it provides:

> ***"Any law, including customary law, that is inconsistent with this Constitution, is void to the extent of this inconsistency…."***

**23. Section 3 (2) of the Judicature Act, chapter 8 of the Laws of Kenya**, acknowledges customary law as a system of marriage in Kenya. The said section provides as follows: -

> **(2) The High Court, the Court of Appeal and all subordinate courts shall be guided by African customary law in civil cases in which one or more of the parties is subject to it or affected by it, so far as it is applicable and is not repugnant to justice and morality or inconsistent with any written law, and shall decide all such cases according to substantial justice without undue regard to technicalities of procedure sand without undue delay**.

**24. Section 43 of the Marriage Act, No.4 of 2014** provides that: -

> ***"43 (1) a marriage under this Part shall be celebrated in accordance with the customs of the communities of one or both of the parties to the intended marriage.***
>
> ***(2) Where the payment of dowry is required to prove a marriage under customary law, the payment of a token amount of dowry shall be sufficient to prove a customary marriage."***

***25.*** The above provision is clear that both or any customary marriage requirement of either culture is applicable. It further provides that token amount of dowry shall suffice to prove customary marriage.

**26.** Whatever system of marriage the respondent alleges; it was incumbent upon her to prove it on a balance of probabilities. In **Gituanja v Gituanja (1983) KLR 575**, the Court of Appeal held that the existence of a customary marriage is a matter of fact which must be proved with evidence.

**27.** In **Hortensia Wanjiku Yawe v The Public Trustees, Civil Appeal 13 of August 6, 1976** (Wambuzi, P Mustafa V-P and Musoke, JA) is to the same effect. In this case, Justice Kneller laid down three important and salutary principles regarding proof of customary marriages in Court. These are:

> ***i. The onus of proving customary law marriage is generally on the party who claims it;***
>
> ***ii. The standard of proof is the usual one for a civil action, namely, one the balance of probabilities;***
>
> ***iii. Evidence as to the formalities required for a customary law marriage must be proved to that evidential standard.***

**28.** Once it is proved that there was long cohabitation between the deceased and the person claiming to be the wife, it was further held in **M N M vs. D N M K & 13 Others** (supra) that:

> **"The onus is on the person alleging that there is no presumption of marriage to prove otherwise and to lead evidence to displace the presumption of marriage (*Mbogoh v. Muthoni & Another,(supra)*. *Mustapha, JA* added in *Hortensia Wanjiku Yawe v. Public Trustee (supra)* that long cohabitation as a man and wife gave rise to a presumption of marriage in favour of the wife and that only cogent evidence to the contrary can rebut such a presumption. (See also *Kimani v. Kimani & 2 Others (supra)*."**

**29.** In this case, it was averred by the Respondent that she was married to the deceased. Her main witness, DW1, the chief of her area testified that he was aware of the Uthoni ceremony between the deceased and the respondent but he did not attend it nor can he remember when it took place.

**30.** The applicants are adamant the deceased was not married to the respondent. They cite the fact that prior to his death, the deceased had lived alone in Mombasa for over three years, that the respondent did not play any role after the death of the deceased up to the burial of the deceased, further that the respondent was not acknowledged in any way in the burial announcement of the deceased and in the eulogy of the deceased. The respondent testified that she was not aware whether the deceased paid her dowry.

**31.** I rely on the decision of Duffus JA in **Kimani v Gikanga [1965] EA 735 at pg. 739** which explained proof of marriage as follows: -

> ***"To summarise the position; this is a case between Africans and African customary law forms a part of the law of the land applicable to this case. As a matter of necessity, the customary law must be accurately and definitely established. The Court has a wide discretion as to how this should be done but the onus to do so must be on the party who puts forward customary law. This might be done by reference to a book or document reference and would include a judicial decision but in view, especially of the***

***present apparent lack in Kenya of authoritative text books on the subject, or any relevant case law, this would in practice usually mean that the party propounding customary law would have to call evidence to prove that customary law, as would prove the relevant facts of his case."***

**32.** The respondent is therefore under the obligation to discharge the burden of proof of customary marriage between her and the deceased. By way of oral evidence or refer to any recognized Treatise or other Publication dealing with the subject.

**33.** The respondent was a Kikuyu b tribe while the deceased was a Muembu. In her evidence the respondent did not call any expert witness on the existence or to prove the nature of either the Embu or the Kikuyu customary marriage which she claimed was performed between her and the deceased. She also failed to prove that any dowry was plaid to her parents when she that she was not sure that the deceased had paid dowry

**34.** It was held the Court of Appeal in the case of **Eliud** ***Maina Mwangi v Margaret Wanjiru*** **Gachangi [2013] eKLR** *that:*

***"Customary law is certainly not static. Like all other human inventions, it is dynamic and keeps evolving from generation to generation. Customary ceremonies cannot therefore be expected to be conducted in 2013 in exactly the same way that they were conducted in, say, 1930. To insist on rigid customary ceremonies at all times is the surest way of rendering customary law obsolete. For example, essential steps like payment of dowry may be satisfied by payment of the monetary equivalent of such items as goats and cows instead of delivery to the prospective in-laws every item in kind, such as beer, honey, live goats and cows. The bottom line appears to be that the essential steps and ceremonies must be performed, irrespective of the form in which they are performed."***

**35.** The progressive nature of customary marriage was explained by the Court of Appeal. As customs are surely organic, the exact procedures for a valid customary marriage cannot be said to be codified. However, certain pre-requisites must be present in any customary marriage. It is imperative to note that the failure of certain formalities does not *per se* invalidate a customary marriage provided there exists sufficient evidence to show that a customary marriage was intended and certain substantive pre-requisites were performed.

**36.** This court is aware of the principle of marriage by presumption. That was explained by Nyarangi, JA in the case of **Mary Njoki v John Kinyanjui Mutheru & 3 Others 1985 eKLR as follows: -**

***"In my judgment, before a presumption of marriage can arise, a party needs to establish long cohabitation and acts showing general repute. If the woman bears a child or better still children, so that the man could not be heard to say that he is not the father of the children, that would be a factor very much in favour of presumption of marriage. Also, if say, the two acquired valuable property together and consequently had jointly to repay a loan over a long period, that would be just what a husband and wife do and so it would be unreasonable to regard the particular man and woman differently. Performance of some ceremony of marriage would be strong evidence of the general repute that the parties are married. To sum it, there has to be evidence that the long cohabitation is not close friendship between a man and woman, that she is not a concubine but that the cohabitation has crystallized into a marriage and that it is safe to presume that there is a marriage. To my mind, these features are all too apparent in the Yaweand in Mbiti. To my mind, presumption of marriage, being an assumption does not require proof, of an attempt to go through a form of marriage known to law."***

**37.** As the **Mary Njoki Case** (supra) held, whether or not a presumption of marriage arises in a particular case and whether or not that presumption is rebutted is a question of fact. The person asserting the presumption must put in evidence sufficient evidence which, on a balance of probabilities, demonstrates the quantitative elements. Once this happens, it would then be up to the other party to rebut the presumption.

**38.** First, she asserted that she and the deceased were married under Kiembu customs after the deceased's first wife died. She produced photos with the in intimate familiar moments. She also produced Defence Exhibit 4, a photo showing her laying a heart shaped wreath on the deceased's grave. The respondent was also in possession of original title deeds, share certificates and other vital personal documents left by the deceased. This detailed evidence of the respondent was not challenged by the applicants but merely denied.

**39.** As a preliminary issue, I agree with the applicant's contention that there was no customary marriage between the respondent and deceased. But that does not preclude the court from finding that the parties cohabited for a period of time and conducted themselves in such a manner that a marriage could be presumed. This principle has been upheld in several cases from our courts. In ***Hortensiah Wanjiku Yawe v Public Trustee*** **CA Civil Appeal No.13 of 1976 (UR)** the Court of Appeal for East Africa held that a long period of cohabitation as man and wife may give rise to a presumption of marriage in favour of the party asserting it. Mustafa JA., held as follows: -

***"I find nothing in the Restatement of African Law to suggest that Kikuyu customary law is opposed to the concept of presumption of marriage arising out of long cohabitation. In my view, all marriages in whatever form they take, civil or customary or religious, are basically similar, with the usual attributes and incidents attaching to them. I do not see why the concept of presumption of marriage in favour of the appellant in this case, should not apply just because she was married according to Kikuyu customary law. It is a concept that is beneficial to the institution of marriage to the status of the parties involved and to the issue of their union, and in my view, is applicable to all marriages, however celebrated. The evidence concerning cohabitation was adduced at the hearing and formed part of the issue concerning the fact of marriage ..."***

**40.** In ***Mary Wanjiku Githatu v Esther Wanjiru Kiarie*** **[2010] eKLR,** Bosire JA., summarized the position thus:

***"The existence or otherwise of a marriage is a question of fact. Likewise, whether a marriage can be presumed is a question of fact. It is not dependent on any system of law except where by reason of a written law it is excluded. For instance, a marriage***

***cannot be presumed in favour of any party in a relationship in which one of them is married under statute. However, in circumstances where parties do not lack capacity to marry, a marriage may be presumed if the facts and circumstances show the parties by a long cohabitation or other circumstances evinced an intention of living together as husband and wife."***

**41.** The Court of Appeal in **Phylis Njoki Karanja & 2 others v Rosemary Mueni Karanja & Another NRB CA Civil Appeal No. 313 of 2001 [2009] eKLR**, held that the presumption of marriage could be drawn from long cohabitation and acts of general repute. It held that:

***"Before a presumption of marriage can arise a party needs to establish long cohabitation and acts of general repute; that long cohabitation is not mere friendship or that the woman is not a mere concubine but that the long cohabitation has crystallized into a marriage and it is safe to presume the existence of a marriage. We are of the view that since the presumption is in the nature of an assumption it is not imperative that certain customary rites be performed."***

**42.** The court has made several observations from the evidence of the parties.

**43.** Firstly, that after the death of the deceased the applicants had shown hostility to the respondent who even stopped cultivating the land of the deceased and moved from the deceased's Githimu home to Nairobi.

**44.** Secondly, that after the burial, the respondent on one hand and the applicants were following deceased's benefits or share proceeds at Mikiki Co-operative Society.

**45.** DW2 testified that two ladies went separately to the society for that purpose who she identified as the respondent and the applicant.

**46.** Thirdly, that the deceased was a member of Mikiki Co-operative Society and that he had given the name of the respondent in the capacity of his wife as a nominee. He was required to bring further information to the society which he was yet to provide at the time of his death.

**47.** The respondent produced about 13 photographs in her effort to prove that she was the wife of the deceased. These photos showed the following situations: -

***i.*** *The deceased and the respondent*

***ii.*** *The deceased, the respondent, the daughter and grandchild of the respondent*

***iii.*** *The applicant and her sister laying a wreath on the grave of the deceased during the burial*

***iv.*** *The respondent laying a wreath on the deceased's grave on the day of the burial*

***v.*** *Birthday celebration of the respondent's grandchild where the 1st applicant was present and being served with a cake by the respondent's grandchild*

***vi.*** *The deceased and his siblings in a wedding*

**48.** The photographs were not challenged as not being genuine by the applicants. The applicants did not explain how she was a participant in a birthday party of the respondent's grandchild although she had denied that the respondent was a spouse to the deceased.

**49.** In my considered view, the photographs demonstrate deep interaction between the deceased and the respondent especially where they were together and sometimes with the respondent's daughter Rahab and her daughter. As for the 1st applicant, she seems to have interacted with the respondent, with the respondent's daughter and her grandchild during the lifetime of the deceased.

**50.** It is trite law that photographs alone are not evidence of marriage *per se* but they may tell a story about people and their interaction.

**51.** As for the deceased's membership of Mikiki Co-operative Society, it is not in dispute that he gave the name of the respondent as his nominee and referred to her as his wife. He was yet to provide further information but his choice of nominee was borne by the society's register produced in court.

**52.** DW3 told the court that there were many other members of the society who were yet to provide some information though they had chosen their nominees. The deceased therefore treated the respondent as his wife for all intents and purposes.

**53.** DW3 also said that a nominee must be a spouse or a child of the member. This requirement must have influenced the choice of the deceased to make the respondent his nominee since his wife had passed on several years back.

**54.** As for the Kenya Methodist University application form dated 7/08/2006, DW1 said it was filled by the 1st applicant in her own handwriting where she gave the respondent's name as her mother/guardian and even used her postal address Box Number 62037 Nairobi as her contact address. Although the 1st applicant denied ever filling the form, all her personal details, names of parents, schools attended among others are contained therein.

**55.** DW2 explained that the 1st applicant left the form in her house. The 1st applicant said she was admitted at Kenyatta University where she

pursued her studies. It is not unusual for a person looking for a school or an institution to pursue further studies to be admitted in two of such places and make a choice of one of them.

**56.** I believed the respondent that the 1st applicant filled the form and left it in the house. There was no intimation that someone else could have obtained the form and filled it.

**57.** The deceased entrusted his important documents with the respondent in their home. The 1st applicant agreed that the original title deeds of the deceased's assets were in the custody of the respondent. This is evidence of the relationship of the two and the trust that had developed at the time the two stayed together.

**58.** The respondent told the court that the deceased worked in Mombasa but had a home at Githimu in Embu where the two stayed during deceased's leave or off-duty periods.

**59.** The deceased's capacity to marry was not in dispute having lost his wife a few years earlier. He took the respondent as his companion in 1997. By the time of his death, the two had cohabited for a period of about five (5) years. They had no biological children but had adopted Rehab as his child in the cohabitation.

**60.** It was observed in the case of **Mary Njoki v John Kinyanjui Mutheru & 3 Others 1985 eKLR** by the Court of Appeal that:

> ***Cohabitation, with habit and repute, in the absence of countervailing proof to the contrary, establish a marriage on the ground that the cohabitation as husband and wife is proof that the parties have consented to contract that relationship.***

**61.** I have considered the acts showing a general repute of the respondent and the deceased and the evidence adduced by the respondent. It is my considered opinion that the respondent has established that she cohabited with the deceased for a period of five years. The presumption of marriage through cohabitation is nothing more than an assumption that parties must be married.

**62.** I find that it is safe to find that marriage is presumed from the said cohabitation.

**63.** As such the respondent was a widow of the deceased at the time of his death. For that reason, she was not a stranger to the estate and was legally entitled to apply for a grant of representation provided that she involved the first family of the deceased.

**64.** The conditions under which the court may revoke a grant as set out under **Section 76 and Rule 44 of the Probate and Administration Rules**.

**65. Section 76** provides as follows:

> ***"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) …."***

**66.** The documents filed in court show that the application for the grant of letters of administration intestate was filed and thirteen beneficiaries, including the applicants and respondent, named therein.

**67.** While the applicant has set out in his application the statutory grounds for revocation of a grant as set out under section 76, I have not been able to find, either in their affidavit or the submissions made on his behalf, any substantiation of those grounds. The applicants submit that the inclusion of Rahab Wanjiku as one of the beneficiaries under the guise of being the daughter of the deceased amounted to presenting false information.

**68.** However, it is the respondent's submission that Rahab was not a daughter of the deceased but one that she came with to the marriage and one whom the deceased took as his own. This was not controverted by the applicants. Having previously herein held that there was a presumption of marriage between the deceased and the respondent and considering the submissions of the respondent, it is my opinion that this was not a falsehood by the respondent.

**69.** The applicant alleges that they did not consent to the applicant applying for the letters f administration as is evidenced in Form 38. The respondent submit that every effort was made to ensure that the applicants were informed of the proceedings.

**70.** I do note from the court record that no consent was obtained from the applicants at the time of filing the petition. To me the petition was filed contrary to **Rule 26 of the Probate & Administration Rules** which states: -

***"26(1) Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.***

***(2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require"***

**71.** Under Section 76 of the Law of Succession Act[3] the court can on its own motion revoke a grant where there are sufficient grounds to do so. This is a proper case for the court to revoke the grant on its own motion under the foregoing section on account of the fact that the proceedings leading to the issuance of the grant were defective in substance. The petition ought to have been accompanied by consent as provided under **Rule 26 of the Probate and Administration Rules** signed by all the beneficiaries of the appropriate renunciation or in the alternative a renunciation duly signed as required.

**72.** The effect of failure to comply with Rule **26** of the Probate and Administration Rules was ably discussed by the court in **Al-*Amin Abdulrehman Hatimy v Mohamed Abdulrehman Mohamed & another[* 2013] eKLR** where the court held that the law of succession by virtue of Rule 26 requires that any application for issue of a grant must be accompanied by a consent duly signed by all persons entitled in the share in the same estate.

**73.** Due to the fact that all beneficiaries were not informed of the filing of this petition, and in view of the fact that the respondent misrepresented to the court that he was the sole beneficiary, I find and hold that the grant herein was indeed obtained by concealment of material facts, namely the existence of other beneficiaries.

**74.** The respondent knew at all material times that the first applicant was in occupation. She admitted this in court when she said she has no intention of evicting her. She secretly petitioned for the grant but failed to involve her. The failure by the respondent to involve the members of the first family of the filing of these proceedings and failing to disclose her interests to the court amounted to non-disclosure of material facts.

**75.** It is settled law that a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have a bearing on the adjudication of the issues raised in the case. If one is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person. This position was well captured in one of the earliest decisions on the subject rendered in 1917 in *R. v. Kensington Income Tax Commissioner**[5]*** by Viscount Reading, Chief Justice of the Divisional Court.

**76.** In the matter of the state of ***Mwaura Mutungi alias Mwaura Gichichio Mbura alias Mwaura Mbura-deceased*** **NBI HC Succ No 935 of 2003** a grant was revoked because the applicant had failed to notify the applicant of the petition and obtain his consent.

**77.** It is my finding that the applicant has satisfied the requirements of **Section 76 of the Succession Act**.

**78.** The application is therefore merited and is allowed in the following terms: -

***a) That the grant issued to Irene Waithera Mbugua is hereby revoked.***

***b) That a fresh grant to issue in the names of Irene Waithera Mbugua and Annette Wandia Njeru.***

***c) That the administrators are hereby directed to file an application for confirmation of grant either jointly or by one of them within thirty (30) days.***

d) ***That this being a succession cause, there will no order as to costs***.

**79.** It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 4TH DAY OF JUNE, 2019.**

**F. MUCHEMI**

**JUDGE**

**In the presence of: -**