



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT EMBU**

**SUCCESSION CAUSE NO. 442 OF 2012**

**IN THE MATTER OF THE ESTATE OF NJENGA NJIRATA (DECEASED)**

**ELIJA KITHAKA NTHIGA.....APPLICANT**

**VERSUS**

**NJERU NTHIGA.....1<sup>ST</sup> RESPONDENT**

**SEPHANIA NYAGA NJAGI.....2<sup>ND</sup> RESPONDENT**

**NEWTON NTHIA NJERU.....3<sup>RD</sup> RESPONDENT**

**RULING**

**A. Introduction**

1. This ruling pertains to the summons dated 13/12/2017 in which the applicant seeks revocation of the grant issued in favour of the respondents and confirmed on the 5/06/2011.
2. It is the applicant's case that the grant was obtained fraudulently by concealment from the court of the fact that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents were not beneficiaries of the deceased's estate, further that the respondents failed to disclose the names, assets and status of all children of the deceased some of whom were minors.
3. The applicant further asserts that the respondents having obtained the grant have failed without reasonable cause to proceed diligently with the administration of the deceased's estate and finally that the grant has become useless and inoperative through subsequent circumstances.
4. In rejoinder vide a replying affidavit deposed by the 2<sup>nd</sup> respondent on her behalf and that of the 3<sup>rd</sup> respondent, states that the grant in issue was issued and confirmed to the 1<sup>st</sup> respondent wherein all beneficiaries to the deceased's estate were all taken care of and none was left out.
5. The 2<sup>nd</sup> respondent further deposed that all assets had been disclosed to the court and that the applicant had failed to disclose which assets of the deceased were left out. Further, the 2<sup>nd</sup> respondent states that all of the deceased's estate had been distributed except Nthawa/Riandu/1319 which had been awarded to the 2<sup>nd</sup> and 3<sup>rd</sup> respondents.
6. The 2<sup>nd</sup> respondent further deposed that the beneficiaries allegedly left out of the deceased's estate namely Margret Njoki Njeru and Josphine Njeri Nthia were a sister to the applicant already provided for and a great grandchild of the deceased not entitled to benefit directly from the deceased's estate.
7. For the above reasons the 2<sup>nd</sup> respondent asserts that the summons for revocation lack merit and ought to be dismissed.
8. The parties filed submission to dispose of the matter.

**B. Applicants' Submission**

9. The applicants submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents were not beneficiaries of the deceased's estate and thus not entitled to a share of

the deceased's estate whereas the applicant and his sisters were not included in the schedule of persons entitled to share the estate of the deceased and as such were disinherited.

10. The applicant further submitted that the 1<sup>st</sup> respondent, the administrator of the deceased's estate, has failed without reasonable cause to proceed diligently with the administration of the deceased's estate specifically by awarding the whole of Nthawa/Riandu/1319 to individuals who are not children of the deceased and thus disinheriting the applicant and his siblings.

### **C. 2<sup>nd</sup> & 3<sup>rd</sup> Respondents' Submissions**

11. It is the respondents' submission that the applicant benefited from the deceased's estate by getting land parcel number Nthawa/Gitiburi/719 and further that all of the deceased estate has been distributed in accordance with the grant and title deed processed and issued apart from parcel number Nthawa/Gitiburi/1319.

12. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents further submit that the persons allegedly left out are the daughter and granddaughter of Cecilia Wanja Nthia a beneficiary of the deceased's estate who is still alive and was awarded land parcel number Nthawa/Gitiburi/912.

13. The 2<sup>nd</sup> and 3<sup>rd</sup> respondent further submit that this court had already ordered that the Deputy Registrar signs all the necessary documents to facilitate the transfer of the suit premises to themselves and should thus proceed to dismiss this application so those orders are implemented.

### **D. Analysis & Determination**

14. The substantive issue for determination before this court is whether the summons for the revocation of grant issued to the 1<sup>st</sup> respondent is merited. 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.*

15. In succession proceedings, parties must make full disclosures to the court of all material facts to the case. This principle of law emphasizes utmost good faith from parties who take out or are subject of the court proceedings. Accordingly, non-disclosure of material facts undermines justice such must, immediately be subjected to reversal.

16. I do note that the grant was issued almost 30 years ago and has partly been implemented save for L.R. No. Nthawa/Riandu/ 1319 which according to the confirmed grant was bequeathed to Newton Nthia Njeru and Sephania Nyaga Njagi in equal shares. Further contrary to the applicant's submission, Form P & A 5 reveals the that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents are beneficiaries of the deceased's estate.

17. Further I have perused the supporting documents relied on by the applicant specifically the marriage certificate which in my view reveal that the alleged beneficiaries, Miriam Njoki Njeru and Josephine Njeri Nthiga were daughters of one Cecilia Wanja. They are thus at the very least grandchildren of the deceased.

18. Under Part V of the Law of Succession Act, grandchildren have no right to inherit their grandparents who die intestate. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents' indirectly through their own parents, the children of the deceased. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are deceased but their shares are restricted to those of their deceased parents unless the family decides otherwise.

19. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to their deceased parents. In this case, the alleged left out beneficiaries' mother; Cecilia Wanja Nthiga survived the deceased. Cecilia was the one entitled under Part V to inherit the deceased being a beneficiary. From the confirmed grant, she was bequeathed land parcel No. Nthawa/Gitiburi/912 to which her child and grandchild are entitled to.

20. This court vide a ruling delivered on the 20/09/2017 ordered the Deputy Registrar to sign all the necessary documents to facilitate the transfer of land parcel No. Nthawa/Riandu/1319 to the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. That order still stands and ought to be implemented as soon as possible to enable the 2<sup>nd</sup> and 3<sup>rd</sup> respondents enjoy their inheritance.

21. The upshot of all the above is that the summons dated 13/12/2017 for revocation lack merit and is hereby dismissed.

22. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 18<sup>TH</sup> DAY OF SEPTEMBER, 2019.**

**F. MUCHEMI**

**JUDGE**

**In the presence of: -**

**Mr. Njiru for the Applicant**

**Ms. Gathua for Wairimu for 3<sup>rd</sup> and 2<sup>nd</sup> Respondent**