



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO. 811 OF 2015**

**IN THE MATTER OF THE ESTATE OF FRANCIS MBURU MACHARIA (DECEASED)**

**JOHN MACHARIA MBURU.....PETITIONER**

**VERSUS**

**LYDIA GAITIABI PAULINO.....APPLICANT**

**R U L I N G**

1. This is a ruling on the Summons dated 8/3/2019 brought pursuant to **Section 76 (b) and (c) of the Law of Succession Act, Rules 44 (i), 49 and 73 of the Probate and Administration Rules.**
2. In the Summons, the applicant sought *inter alia*, order that the letters of administration issued to the petitioner on 29/2/2016 and confirmed on 28/6/2017 be revoked or annulled.
3. The grounds upon which the application was made were set out in the body of the application and the supporting affidavit of **Lydia Gaitiabi Paulino** sworn on 8/3/2019. She contended that the petitioner misled the Court that he was the only beneficiary of the estate of the deceased. She swore that the deceased was survived by the applicant (**widow**), John Macharia Mburu (**son**), Nancy Mwendwa (**daughter**) and Muthoni (**daughter deceased but represented by Sammy Mwenda**).
4. She further averred that after the death of the deceased, the petitioner broke into her home on **land parcel No. KIIRUA/KIIRUA/968** and carried all her documents, photographs and has an intention of evicting her. She reported to the police and the petitioner was arrested and charged. The petitioner has brought 3<sup>rd</sup> parties to the estate with the intent of selling the property.
5. Although the petitioner was served, he never appeared or opposed the application. The application was therefore heard *ex-parte*. It was submitted that, in the Chief's letter of introduction, the petitioner was stated as the only beneficiary. During confirmation, the chief gave evidence from which the court concluded that the petitioner was the only beneficiary. However, on the facts that had been put forth by the applicant which were not controverted, it would only be fair and just to hear the applicant in regard to her claim.
6. The issue of determination before the court is **whether to revoke and or annul the grant**. For a court to revoke and or annul a grant an applicant must prove to the court that the grounds stipulated under **Section 76 of the Law of Succession Act** have been met.
7. According to the applicant, the grant was obtained secretly, fraudulently by making false statement and by means of untrue allegation. That the petitioner filed the cause secretly by stating that he was the only beneficiary of the deceased of which according to the applicant that is not the case. The deceased is survived by the applicant and three children. That the applicant married the deceased in 2002 and lived with him as his wife until his demise.
8. These allegations made on oath were never rebutted. They remain the truth. In his letter of introduction dated 6/5/2015, the area Chief stated that the deceased was survived by only the petitioner. At confirmation, the same Chief, **Samuel Kimonye Ruchiu**, told the court that he had been the Chief of Kiirua Location for 20 years and that he knew the deceased for 10 years.
9. The Chief further told the Court that the deceased had one son and three daughters. That all the daughters and the wife of the deceased were deceased. That it was the petitioner who was only alive.
10. According to the applicant, one of the daughters who is deceased, is survived by a son. Under **Section 41 of the Law of Succession Act** as well as the principle of representation, a child is entitled to their parent's share that they would have given.

11. From the foregoing, it is clear that the grant was obtained fraudulently. The petitioner lied to Court. The grant cannot stand. Accordingly, I make the following orders: -

- a) the grant of letters of administration issued to the **John Macharia Mburu** on 16/3/2016 and confirmed on 28/06/2017 is hereby revoked.
- b) a fresh grant of letters of administration is hereby issued to **John Macharia Mburu** and **Lydia Gaitiabi Paulino**, jointly.
- c) land parcels No. **KIIRUA/KIIRUA/968, KIBIRICHIA/NTUMBURI/1371** and **KIBIRICHIA/NTUMBURI/1374** be reverted back to the name of the deceased, **Francis Mburu Macharia**.
- d) the administrators do file for confirmation within 30 days of the date hereof, failing agreement any one of them is at liberty to file such Summons within 15 days thereafter and serve the other. A protest thereto may be filed within 15 days of service.
- e) I will make no order as to costs.

**DATED** and **DELIVERED** at Meru this 11<sup>th</sup> day of December, 2019.

**A. MABEYA**

**JUDGE**