



**REPUBLIC OF KENYA**

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

**SUCCESSION CASE NO. 38 OF 2016**

**IN THE MATTER OF THE ESTATE OF HITI WANGURE (DECEASED)**

**STEPHEN MWANGI HITI.....APPLICANT**

**VERSUS**

**PETER CHEGE KIMUNYU.....1<sup>ST</sup> RESPONDENT**

**JAMES MUNGAI MAINA.....2<sup>ND</sup> RESPONDENT**

**JOSEPH NGECHU CHEGE.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. Before me is Summons for Revocation of Grant filed on 8<sup>th</sup> January, 2016 brought under Rule 44 of the Probate and Administration Rules of the Law of Succession Act. The Applicant (“Applicant”) sought for an order:-

a) That the grant of letters of administration made on 21/2/2011 in **Thika Succession Cause number 422 of 2004** be revoked and /or annulled.

2. The application is based on the grounds that the estate is valued at over Kshs. 15,000,000/= thus the court lacked pecuniary jurisdiction, that some beneficiaries were left out and that the grant was confirmed irregularly.

3. The application is supported by the affidavit of **Stephen Mwangi Hiti** the Applicant herein filed on even date. He deponed that the deceased was his father. He listed the dependants left by the deceased from the 1<sup>st</sup> and the 2<sup>nd</sup> house. He further deponed that the children of the dependants who are deceased have been left out. He also stated that the estate is well over Kshs. 15,000,000/= and as such the court lacked jurisdiction to hear and determine the matter.

4. The court directed that the Summons for Revocation or Annulment of Grant be disposed of by way of written submissions. Only the Applicant found it necessary to file his written submissions. Through his counsel, he submitted that the court lacked pecuniary jurisdiction as it was capped at Kshs. 100,000/= when the estate is worth around Kshs. 15,000,000/=. He further submitted that some of the children of the deceased herein are themselves deceased but have left behind their children who are legal dependants and as such entitled to inherit but have been left out. Counsel contended that there was misrepresentation of facts and misinformation to the court and in the circumstances the confirmed grant should be revoked.

5. The application proceeded unopposed. The Respondents were served with the same and appeared only once, on 17/5/17 when directions were to be given. They sought adjournment as their advocate was not present. On subsequent dates, the advocates, Ishmael & Co. Advocates did not attend despite notice. The court has considered the affidavit supporting the motion, the submissions by the Applicant and the record of proceedings in the lower court. The jurisdiction of the subordinate court in succession causes in respect of estates whose value did not exceed the sum of KShs.100,000/= prior to the amendment of Section 48 of the Law of Succession Act pursuant to the enactment of the Magistrate’s Court Act in 2016. The deceased died possessed of one asset, namely, land parcel No.LR LOC.3/GITURI/163. The copy of search annexed as “JN3” to the Applicant’s affidavit is a copy of official search in respect of the said parcel.

6. From this annexure, and the earlier copy dated 31<sup>st</sup> August 2004 and filed together with the Petition for Letters, the land measures 6.07 ha. or 14.9993 acres. It is not possible that the value of the said land was a mere KShs.100,000/= even in 2004 when the suit was first filed. The grant herein was confirmed in 2012, which means that the jurisdiction of the lower court had yet to be enhanced. Clearly the subordinate court did have the necessary pecuniary jurisdiction any time to entertain this cause. The grant issued, and confirmed in 2012 is a nullity for this reason and is hereby nullified. It is also noted that the application to confirm grant was by a person who did not hold the grant, and that in itself is an irregularity that renders the confirmed grant liable for revocation.

7. The court allows the application filed on 8<sup>th</sup> January 2016 and directs that in light of the age of this matter, the Applicant who is a son of the deceased, does within 60 days of today's date file a fresh Petition for grant of letters of administration in this court. In so doing the Applicant is to disclose all the surviving and deceased widows and children of the deceased, or if any of the intestate's children are themselves deceased, their children. In the circumstances of this case, the only consent to be filed is that of any surviving widows or children of the deceased. A consent introduction letter by the relevant chief, indicating the particulars of all the widows or children of the deceased whether living or deceased, and any grandchildren of such deceased children is to be filed with the Petition. To obviate confusion, the said Petition is to be filed within this cause.

8. The Applicant will bear his own costs in the application.

**DELIVERED AND SIGNED AT KIAMBU THIS 5<sup>TH</sup> DAY OF DECEMBER 2019**

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**C. MEOLI**

**JUDGE**

**In the presence of:**