



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**SUCC CAUSE NO 194 OF 2004**

**In the matter of the Estate of M'Ikiara Kangetu (Deceased)**

**JOSEPH NJOGU KATHURIMA.....PETITIONER**

**-Versus-**

**GLADYS GAUKU M'MBWIRIA**

**ESTHER MARINGA MWITI**

**CONSOLATA K. MUGIRA**

**JENIFFER CHAKU M'ARIMI.....INTERESTED PARTIES**

**RULING**

**Revocation of grant**

[1] The significant order sought in the Summons for Revocation or Annulment of Grant dated 8<sup>th</sup> December 2016 and expressed to be brought under section 47 and 76 of the Law of Succession Act, rule 44 and 73 of the Probate and Administration Rules and other enabling provisions of the law is revocation of the grant of letters of administration of the estate herein issued to Joseph Njogu Kathurima on 17<sup>th</sup> March 2016. The request for inhibition had been granted on 23<sup>rd</sup> January 2017.

[2] I will not re-invent the wheel here. For such application to succeed, the party applying must prove one or more of the grounds set put in section 76 of the Law of Succession Act which provides 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*

*iv. that the grant has become useless and inoperative through subsequent circumstances.*

[3] What grounds have been pleaded by the applicants as the basis for revocation of the grant herein? My reading of the affidavit in support of the application as well as the submissions filed by the applicants, the major grounds for applying are:

*a. That petitioner is the son while the applicants are some of the daughters of the deceased.*

*b. That the petitioner filed this cause without their knowledge. He did not also obtain their consent to apply for administration for the estate as required in law. That the petitioner admitted in paragraph 4 of the Replying affidavit sworn on 14<sup>th</sup> March 2017 that he did not involve the daughters of the deceased in these proceedings for they were married and had not indicated they were interested in getting a share of the estate.*

*c. That the deceased had three wives and 16 children. And that all the children of the deceased rank equal in inheritance. But, despite this legal reality, the petitioner distributed the estate to sons only, thus, has disinheriting all the daughters of the deceased.*

*d. That for those reasons, the grant should be revoked.*

[3] The petitioner opposed the application and filed a Replying affidavit and submissions. From his affidavit and submissions, he takes refuge in the fact that this cause was gazetted and the applicants did not object to the making of grant. He averred in paragraph 5 that the applicants were all along aware of this cause as he had informed each one of them about it. But, he goes ahead to state in paragraph 4 that they did not involve the sisters in the distribution of the estate because they were married and did not indicate that they were interested in getting a share of the estate. He dismissed their application as a mere afterthought meant to harass the dependants of the deceased.

[5] In his submissions, he has attempted to run away from the tag of discrimination of his sisters by stating that he has made attempt to give the share of John Kiambi M'Íkiara to his wife Lucy Ngari Kiambi. He also seems to suggest that although daughters are entitled to share the estate of the deceased, but his sisters are well off and should give room for the needy ones. He also urged that he did not leave them out as he listed their names in the petition. He also stated that he was following the wishes of the deceased. Therefore, he believed that he did not breach section 76 of the Law of Succession Act. He asked the court not to revoke the grant as that would occasion irreparable harm to the other dependants with priority. He beseeched the court to dismiss the application.

## **DETERMINATION**

### **Discrimination against daughters in inheritance**

[6] The court will not rest until it is over. Every time the law encounters any form of discrimination- in this case, of daughters in inheritance- its heart throb with extreme anger; and I find myself repeating a work of court **in the Matter of the Estate of M'Ngarithi M'Miriti alias Paul M'Ngarithi M'Miriti**

(Deceased) [2017] e KLR on the subject, that:-

**Discrimination of daughters in inheritance**

*From the arguments coming through, it is clear issues to do with discrimination based on gender and sex have emerged. There were bad times in the heavily patriarchal African society; that being born as daughter disinherited you. And so, even the judicial journey to liberate daughters from being so down-trodden by the patriarchal society in Kenya on matters of inheritance has been long and painful. As a matter of fact, due to the constitutional architecture of our nation at the time, before 2010, we only saw pin-prick thrusts and rapier-like strokes by courts on these persistent patriarchal biases. But, things changed when RONO vs. RONO [2008] 1 KLR 803 delivered the downright bludgeon-blow on these discriminatory practices against women in inheritance; it splendidly paid deference to the international instruments against all forms of discrimination against women especially the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). And, I am happy to say that from thence, there are many cases- and the number is rising by the day as courts implement the Constitution- which state categorically that discrimination in inheritance on the basis of gender or sex or status is prohibited discrimination in law and the Constitution. More specifically I am content to cite the proclamation by the Court of Appeal in the case of STEPHEN GITONGA M’MURITHI vs. FAITH NGIRAMURITHI [2015] eKLR that:-*

*“Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried...”*

*Therefore, a son will not have priority over a daughter of the deceased simply because he is male; all- male and female siblings- are equal before the law and are entitled to equal protection of the law. See article 27 of the Constitution.*

[7] The petitioner has admitted under oath and also in his submissions that he did not involve his sisters in the filing of these proceedings. As a matter of fact, he did not seek and obtain their consents to the filing of the cause. Mere listing of their names in the Petition is not enough. They must be given notice of the proceedings and their consents must be sought and or obtained. Of importance is that the applicants did not renounce their right to apply or of entitlement. There was also no citation issued in accordance with the law. Therefore, the petitioner’s argument that he did not involve his sisters because they were married or they did not indicate they were interested in the estate is purely arrogant patriarchal disposition. I also note one interesting argument; that the sisters are well off and should accommodate the needy sons. I say only; that inheritance is a right of each rightful beneficiary of the estate and is not dependent upon the financial status or fortunes of the beneficiary. Now, applying the test of law, the only logical inference here is that the Grant was *inter alia* obtained by concealment of a fact material to the case. And as a consequence thereof, the grant becomes a candidate for revocation. On this see the case of **SAMUEL WAFULA WASIKE -vs- HUDSON SIMIYU WAFULA CA NO.161 OF 1993**(Kwach, Omolo and Tunoi JJA) where it was held 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.”**

See also what Koome J (as she then was) stated in **THE MATTER OF THE ESTATE OF NGARI GATUMBI ALIAS JAMES NGARI GATUMBI (DECEASED NAIROBI HIGH COURT SUCCESSION CAUSE NO.783 of 1993**(persuasively) that:

**“A grant will be revoked where a person who is entitled to apply is not notified by the petitioner of their intention to apply and that person’s consent to the petitioner’s application is not sought.**

[8] I conclude that Section 76 of the Law of Succession Act CAP 160 of the Laws of Kenya has been

satisfied by the applicants for:-

*(a) The proceedings to obtain the grant were defective in substance; or*

*(b) 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; or*

*(c) 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*

[9] In the upshot, I revoke the grant. Parties have 30 days to agree on the person or persons to be appointed administrators of the estate which failing the court will exercise its final discretion under section 66 of the Law of Succession Act. For the avoidance of doubt, the inhibition on the estate properties granted by court on 23<sup>rd</sup> January 2017 shall remain in force until these proceedings complete. It is so ordered.

**Dated, signed and delivered in open court at Meru this**

**8<sup>th</sup> day of February 2018.**

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**F. GIKONYO**

**JUDGE**

**In the presence of:**

Muthomi for Gichunge for interested party

M/s. Waigwa for Kimathi for petitioner

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**F. GIKONYO**

**JUDGE**