



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**SUCCESSION CAUSE NO. 390 OF 2008**

**IN THE MATTER OF THE ESTATE OF THE LATE M'IKIUGU M'MWIRICHIA**

**BEATRICE NAITORE MAITIMA.....PETITIONER**

**VERSUS**

**MARTIN BUNDI MAITIMA.....1ST APPLICANT**

**DAVID KIMATHI MAITIMA.....2ND APPLICANT**

**JOHN MUTHUURI MAITIMA.....3RD APPLICANT**

**R U L I N G**

1. **STEPHEN MAITIMA M'RIRIA** (“the deceased”) died on 26<sup>th</sup> March, 2008. He was survived by his wife Beatrice Naitore Maitima, two sons Martin Bundi Maitima and David Kimathi Maitima, and a daughter Everlyne Mpinda. He left Plot No. 135, Isiolo, parcel nos. Ntima/Igoki/4677 and 4678, respectively and shares in Standard Chartered Bank Ltd as his estate.
2. On 5<sup>th</sup> September, 2008, Beatrice Naitore Maitima (“the petitioner”) petitioned for letters of administration which were issued to her on 3<sup>rd</sup> January, 2009. The grant was thereafter confirmed on 27<sup>th</sup> November, 2009 and all the properties were distributed to her.
3. On 18<sup>th</sup> November, 2013, Martin Bundi Maitima, David Kimathi Maitima and John Muthuuri (“the applicants”) applied for the revocation of the said grant. The grounds set out for revocation were that, the 1<sup>st</sup> and 2<sup>nd</sup> applicants were sons of the deceased while the 3<sup>rd</sup> applicant was a dependant of the deceased. That they were not involved in the bringing of the succession cause and that the petitioner distributed the entire estate to herself.
4. That their signatures were forged in the consents for lodging the Cause as well as in the application for confirmation. They alleged that the petitioner had already subdivided the properties and sold two plots to Evans Mwiti and David Kiriinya Mugambi and that she was in the process of looking for buyers for the rest of the properties. They therefore sought for injunctive orders and inhibition of all dealings with the properties that hitherto formed the estate of the deceased. They obtained interim orders to safeguard the properties.
5. On 26<sup>th</sup> October, 2016, the parties discharged by consent the inhibition orders against Ntima/Igoki/8367 and 8452, which were resultant subdivisions from the estate properties. On 9<sup>th</sup> May, 2017, the court gave directions that the Summons for revocation be determined through viva voce evidence. The court gave the applicants 45 days to file and serve their affidavit evidence and the

petitioner a similar period. The court then fixed the matter for hearing on 2<sup>nd</sup> October, 2017.

6. The matter was listed on 3<sup>rd</sup> October, 2017, when only a representative of the petitioner appeared. The court then fixed the matter for hearing on 14<sup>th</sup> November, 2017. On that date, only the petitioner attended court. Neither the applicants nor their advocate attended court. The court then adjourned the matter to 13<sup>th</sup> February, 2018 for hearing.

7. The record shows that the court served the firm of Kiautha Arithi Advocates for the Applicants with a hearing notice on 16<sup>th</sup> December, 2017. Additionally, vide an affidavit of service of Ken Muriuki, Advocate sworn on 14<sup>th</sup> December, 2017, MS Mbogo & Kariuki Advocates for the petitioner served a hearing notice upon the applicants advocates on 13<sup>th</sup> December, 2017. Both the hearing notices by the court and Ms. Mbogo & Kariuki Advocates were stamped as having been received by the firm of Kiautha Arithi Advocates on the respective dates and copies thereof are on record.

8. On 13<sup>th</sup> February, 2018, when the matter came up for hearing, Mr. Mutegi, Learned Counsel for the applicants applied for adjournment but for reasons on record, the application for adjournment was denied. On being denied the adjournment, Counsel indicated that he did not have any witness to present. As at that date, the applicants had not filed the affidavit evidence ordered on 9<sup>th</sup> May, 2017. They were also not in attendance. Mr. Muriuki Learned Counsel for the petitioner applied that the Summons for the revocation of grant be dismissed in the circumstances.

9. I have considered the entire record, **Section 107 of the Evidence Act** bestows the burden of proof on the person who alleges. It is aptly put that, *he who alleges must prove*. In the instant case, the applicants made several allegations against the petitioner. They were directed to file and serve affidavit evidence in support of those allegations, they failed to do so. On the date of the hearing, they also failed to attend to either testify or be cross-examined on any evidence they had.

10. In the circumstances, I find that the applicants did not tender any evidence to prove their case. The Summons is without merit and the same is hereby dismissed.

11. Since this was a dispute between a mother and her sons, I will not make any order as to costs.

**DATED** and **DELIVERED** at Meru this 5<sup>th</sup> day of April, 2018.

**A. MABEYA**

**JUDGE**