



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 292 OF 2010**

**IN THE MATTER OF THE ESTATE OF M'RUTERE KARACHI (DECEASED)**

**HENRY MUGAMBI ..... PETITIONER/RESPONDENT**

**VS.**

**RAEL KOORU NDEGE ..... INTERESTED PARTY/ APPLICANT**

**RULING**

1. Before me is a Summons brought under **Sections 47 and 76 of the Law of Succession Act, Rule 44 and 73 of the Probate and Administration Rules**. The applicant seeks orders for revocation or annulment of the grant issued to the respondent on 28<sup>th</sup> September, 2010 and confirmed on 7<sup>th</sup> March, 2017.

2. The grounds upon which the Summons is grounded upon are set out in its body and the affidavit of **Rael Kooru Ndege** sworn on 29<sup>th</sup> May, 2017. These were that the applicant is a daughter while the respondent is the son of the deceased; that the grant was issued to the respondent without the applicant's or her sisters' knowledge; that the respondent deceived the Court that the applicant was deceased in order to obtain the grant; that the signatures of the daughters' of the deceased were forged with the intention of disinheriting them.

3. It was further contended that, the respondent had included non-dependants as beneficiaries of the estate in the scheme of distribution leaving out the entitled daughters. That the deceased was survived by:-

- a) Rael Kooru Ndege – Daughter
- b) Zipporah Karimi – Daughter
- c) Beatrice Kiende M'Rutere – Daughter
- d) Stella Kagwiria Mutugi – Daughter
- e) Margret Kangai – Daughter
- f) Henry Mugambi - Son
- g) Julius Gikunda (deceased) - Son

4. The court gave directions that the application be determined through viva voce evidence and that the respective parties do file the affidavits on which to be cross-examined. The applicant and one of the beneficiaries one **Stella Kagwiria Mutugi** swore affidavits which they adopted at the trial. The respondent and the Interested Party did not file any affidavits and neither did they attend the trial although they were aware of both the directions as well as the date of trial.

5. I have considered the affidavits on record and the testimonies of witnesses. This is an application for revocation or annulment of a grant. Under **section 47 of the Law of Succession Act, Cap 160 of the Laws of Kenya**, this court has jurisdiction to make all necessary orders for the ends of justice in matters relating to estates of deceased.

6. **Section 76 of the Law of Succession Act** provides for instances when a grant may be revoked. These include where the grant has been obtained fraudulently or by making a false statement in material particular persons.

7. The ground upon which the present application was made was that the Petition was filed by deceit and falsehoods; that the correct

beneficiaries were left out on distribution; that the respondent forged the signatures of the other beneficiaries and stated that the applicant was deceased in the introduction letter by the chief so as to deny her a share in the estate.

8. None of the above allegations were either denied or challenged. Both the respondent and the interested party shied away from responding to the same. They also failed to attend the trial. The same having been uncontested, they remain true and proved. That being the case, the grant cannot stand.

9. Accordingly, the grant issued on 28<sup>th</sup> September, 2010 is hereby revoked. I appoint Rael Kooru Ndege as the administrator of the estate of the deceased. Leave is granted to the administrator to file an application for confirmation within 30 days of this ruling.

It is so ordered.

**Signed at Meru by me**

**A. MABEYA**

**JUDGE**

**DATED and DELIVERED AT MERU THIS 4TH DAY OF OCTOBER, 2018**

**F. K. GIKONYO**

**JUDGE**