



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 2187 OF 2014**  
**CONSOLIDATED WITH SUCCESSION CAUSE NO. 1681 OF 2014**  
**IN THE MATER OF THE ESTATE OF JANE WANGARI (DECEASED)**  
**STEPHEN NGUNYI WAMUHU .....APPLICANT**  
**VERSUS**  
**GEOFFREY MWANGI KIHUGAH.....RESPONDENT**  
**RULING**

1. The deceased Jane Wangari died intestate on 13<sup>th</sup> January 2014. On 19<sup>th</sup> June 2014 the respondent Geoffrey Mwangi Kihugah filed the **High Court Succession Cause No. 1681 of 2014** at Nairobi petitioning for the grant of letters of administration intestate in respect of her estate. His case was that he was the deceased's widower and the only beneficiary entitled to inherit her estate which comprised:

- a. plot No. B. 5723 Dandora Phase II – Housing Development Scheme – Nairobi;
- b. plot No. D1 – 239 – Kayole in Nairobi; and
- c. plot No. Block C 465 – LR No. 840 Langata Development Company.

The grant was issued on 16<sup>th</sup> September 2014, and confirmed on 15<sup>th</sup> February 2016. The entire estate went to the respondent absolutely.

2. On 13<sup>th</sup> August 2014 the present cause, **High Court Succession Cause No. 2187 of 2014 at Nairobi**, was filed by applicant Stephen Ngunyi Wamuhu in respect of the same deceased seeking for grant of letters of administration intestate. The applicant stated that he was the brother of the deceased. He named the other siblings of the deceased as Francis Mundara (brother), James Kimani Joseck Wamuhu (brother), Zipporah Kariuki (sister), and Rosemary Njeri Waithaka (sister). He deponed that the deceased's assets comprised:-

- a. 50% share in plot No. 5723 Dandora area 2 in Nairobi; and
- b. 50% share in plot No. 239 Kayole in Nairobi.

The grant was issued on 22<sup>nd</sup> September 2015, and confirmed on 9<sup>th</sup> May 2016. The applicant was ordered to be registered to hold the estate for himself and for his siblings.

3. On 19<sup>th</sup> December 2016 the applicant filed this motion to have the grant issued to the respondent to be revoked on the grounds that the respondent had presented himself to the court as the deceased's widower, when he was not; he had forged the chief's letter to say that he was the deceased's widower; he had failed to disclose that the deceased had siblings; he had not served any citation on the siblings; and that he had failed to disclose that he had been served with a citation and demand letter during the pendency of **Succession Cause No. 1681 of 2014**, and therefore knew that there was a claim by the applicant and his siblings on the estate but did not make reference to them at the time he was confirming the grant therein. The applicant swore an affidavit to support the motion. He stated that the respondent and the deceased were never husband and wife, but were merely cohabiting; that by the time the respondent was filing **Succession Cause No. 1681 of 2014** he had received demand letter and citation from the applicant and therefore his actions were fraudulent.

4. The application was opposed by the respondent through his replying affidavit dated 14<sup>th</sup> June 2017. It was his case that he met the deceased in 1984 and started living with her as husband and wife until 2014 when she died. He stated that this was a marriage by long cohabitation, and therefore he was entitled to inherit her estate. He stated that the applicant had not shown that he was a dependant to the deceased, and therefore could not inherit any part of her estate.

5. Counsel for the parties filed written submissions. I have considered them.

6. Under **section 51(2)(g)** of the **Law of Succession Act (Cap. 160)** the respondent was required to indicate the brothers and sisters of the deceased at the time when he filed petition of the grant of letters of administration. The requirement is a mandatory one. He knew the deceased had brothers and sisters, now that he states that he had lived with her since 1984. He attended her funeral and the programme showed her siblings. There was non-disclosure of a material fact, and under **section 76(b)** of the **Act** the grant has to be revoked.

7. It is material to mention that by the time the respondent's grant was being confirmed on 15<sup>th</sup> February 2016 he had been served by a demand letter and citation both dated 17<sup>th</sup> October 2014 showing that the applicant had filed the instant matter and was also seeking a grant of letters of administration intestate in regard to the estate. Being aware of the proceedings and claim, the respondent was obliged to serve any further proceedings on the applicant. He did not. The proceedings leading to the confirmed grant were consequently defective in substance, under **section 76(a)** of the **Act**. That is a ground for revocation.

8. Under **rule 58(2)** of the **Probate and Administration Rules**, after the respondent petitioned for the grant of letters of administration intestate in respect of the estate of the deceased in **Succession Cause No. 1681 of 2014**, the applicant was obligated to file his petition and present application in the same cause. It was procedurally wrong to file his petition in the instant new file with a different cause number (**2187 of 2014**). Under **rule 73** of the **Probate and Administration Rules**, and **Article 159(2)(d)** of the Constitution of Kenya 2010, I consolidate the two causes, so that all proceedings in respect of the deceased Jane Wangari shall be in **High Court Succession Case No. 1681 of 2014 in Family Division at Milimani**.

9. The dispute that shall be heard, and this will be by the giving of oral evidence, shall be whether the deceased was the wife and/or business partner of the respondent; whether the respondent was entitled to inherit the estate of the deceased; and whether the applicant and his siblings had any claim to the estate of the deceased. I am aware that counsel spent a lot of time in the written submissions on the issue whether or not the deceased and the respondent were married. However, evidence needed to be led, one way or the other, on the issue. Such evidence required to be tested. It was pleaded by the applicant that the deceased and the respondent were business partners so that each had a 50% stake. Again, this was to be decided upon evidence which was to be tested.

10. In conclusion, I revoke the grant issued to the respondent on 16<sup>th</sup> September 2014, and confirmed on 15<sup>th</sup> February 2016. The property of the estate shall revert into the name of the deceased. Both sides have 45 days to exchange witness affidavits, file any further affidavits and exchange documentary evidence, following which there will be mention on 26<sup>th</sup> November 2018 for directions on the hearing date.

11. Given the facts of the cause, each side shall bear own costs.

**DATED and DELIVERED at NAIROBI this 1<sup>ST</sup> day of OCTOBER 2018.**

**A.O. MUCHELULE**

**JUDGE**