



**REPUBLIC OF KENYA**

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

**MISC. SUCCESSION CAUSE NO. 17 OF 2018**

**(FORMERLY SPM CHUKA SUCC. CAUSE NO. 14 OF 2012)**

**IN THE MATTER OF THE ESTATE OF NJIEMA MUTHIRWA ALIAS NJIEMA MITHIRUA (DECEASED)**

**AND**

**ERASTUS KEA NJIEMA.....PETITIONER**

**- VERSUS -**

**HENRY GITONGA NJIEMA.....1<sup>ST</sup>.APPLICANT**

**ANISETA KABURU.....2<sup>ND</sup> APPLICANT**

**R U L I N G**

**1. HENRY GITONGA NJIEMA & ANISETA KABURU** have through Summons for Revocation of Grant dated 5<sup>th</sup> July 2018 sought for the revocation of grant issued to Erastus Kea Njiema, the petitioner herein on 2<sup>nd</sup> April, 2013 on the following grounds namely:-

- (a) That the proceedings to obtain the grant were defective in substance.**
- (b) That the grant was obtained fraudulently and through false statement.**
- (c) That the grant was obtained by the concealment from the court, of *material facts to the cause*.**
- (d) That the grant was obtained by untrue allegation of fact.**
- (e) That the petitioner/respondent left out some children of the deceased during distribution of the estate and included strangers.**

2. The applicants have in support of this application filed an affidavit sworn by the 1<sup>st</sup> applicant on 5<sup>th</sup> July, 2018 stated that the respondent did not involve them and only surprised them when he took the surveyors to the estate accompanied by police officers wanting to subdivide the estate. He has also deposed that the respondent forged documents which led to his arraignment in court where he was charged vide **Chuka Chief Magistrate's Court Criminal Case No. 419/2016** and found guilty of forgery of a judiciary document contrary to **Section 351** of the **Penal Code** and obtaining registration by false pretences contrary to **Section 320** of the **Penal Code**.

3. The respondent at the hearing of this application conceded that he was indeed charged and convicted of the said counts. He also stated that he did not appeal which clearly shows that he is guilty of fraud and concealment from court of material facts when he obtained the grant in the cause of the lower court vide **Chuka Chief Magistrate's Court Succession Cause No. 14 of 2012**.

This court finds that applicants have established sufficient grounds for this court under **Section 76** of **Law of Succession Act** to revoke which I hereby do the grant issued on 19<sup>th</sup> March 2012 and confirmed on 2<sup>nd</sup> April, 2013. The grant is hereby nullified and all subdivisions of properties forming the estate resulting from the certificate of confirmation are hereby reversed. The properties comprising the estate namely;

**(i) Karingani/Muiru/747 and**

**(ii) Karingani/Muiru/260**

shall revert back to the name of deceased pending the determination of cause which I direct to be transferred to this court for purposes of hearing and determination.

I also find that the petitioner having been convicted of fraud is not fit to be appointed the administrator of the estate of the late Njeima Mwithirwa alias Njiema Mwithirua (deceased). This court pursuant to the provisions of **Section 66** of the **Law of Succession Act** hereby appoints Henry Gitonga Njiema and Aniceta Kaburu as the administrator and administratrix respectively of the estate of the late Njiema Muthirwa alias Njiema Mwithirua. The two shall jointly administer the estate by involving all the children of the deceased and I grant them liberty to apply for confirmation of grant before the expiry of statutory period in view of the age of this cause.

**Dated, signed and delivered at Chuka this 2<sup>nd</sup> day of November, 2018.**

**R.K. LIMO**

**JUDGE**

**2/11/2018**

Ruling signed, dated and delivered in the presence of both parties and Kaaria for applicant.

**R.K. LIMO**

**JUDGE**

**2/11/2018**