



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**IN THE MATTER OF THE ESTATE OF MUTURA KURIA**  
**(DECEASED)**  
**SUCCESSION CAUSE NO. 450 OF 1992**  
**RULING**

**PLEADINGS**

The deceased herein died on 3<sup>rd</sup> March 1977 as evidenced by a Copy of Certificate of Death attached to the Petition. Representation to his estate was sought by David Kirumba, John Gaitho, David Mungai and Douglas Karanja in their capacities as sons of the deceased, in a petition lodged in court on 10<sup>th</sup> April 1992 for a grant of letters of administration intestate. The deceased was said to have died intestate and to have been survived by the following:-

**a. JANE MUTHONI KURIA - WIFE- deceased**

James Kuria Mutura - Son  
David Kirumba Mutura - Son  
Samuel Gacene Mutura - Son- deceased

**b. LUCY MUTHONI MUTURA - WIFE**

Lucy Muthoni Mutura - Son  
John Gaitho Mutura - Son

**c. SERAH MUKUHI MUTURA - WIFE**

Douglas Karanja Mutura - Son  
Stanley Ndungu Mutura - Son

**d. RUTH WAMBUI MUTURA - WIFE**

Geoffrey Kuria Mutura - Son  
Stanley Gichuhi Mutura - Son  
John Gaitho Mutura - Son  
Simon Ndungu Mutura - Son  
George Munyua Mutura - Son

He was expressed to have died possessed of the following properties:-

- i. Muguga/Muguga/T 15 - 0.25 acre Plot
- ii. Muguga/Muguga/T 196 - 0.25 acre Plot
- iii. Ngenda/Ngenda/749 - 7 acres
- iv. Muguga/Muguga/328 - 2 acre Plot

A grant of letters of administration intestate was made on 30<sup>th</sup> June 1992. On 20<sup>th</sup> May 2013 the administrators filed Summons for Confirmation of Grant and the same was confirmed on 31<sup>st</sup> July 2013, rectified on 18<sup>th</sup> March 2015 and further rectified on 9<sup>th</sup> July 2018.

On 9<sup>th</sup> October 2018 application for Summons for Revocation / Annulment of Grant was filed at the instance of Cecilia Wanjiru Njenga under Section 76 of the Law of Succession Act Cap 160 Laws of Kenya, Rule 73 of the Probate and Administration Rules and all other enabling provisions of the law. She sought the following orders:-

- a. That the grant of letters of administration intestate of the estate of Mutura Kuria (Deceased) issued to David Kirumba Mutura (the 1<sup>st</sup> Respondent herein), Douglas Karanja Mutura (the 2<sup>nd</sup> Respondent herein), John Gaitho Mutura (the 3<sup>rd</sup> Respondent herein) and David Mungai Mutura (the 4<sup>th</sup> Respondent herein) on 30<sup>th</sup> June 1992 and /or the Certificate of Confirmation of Grant thereto issued on 31<sup>st</sup> July 2013 be annulled/revoked.

The Applicant's application was based on the following grounds:-

- a. That the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents herein alongside Peter Rigii Gaitho, James Mwenda Gaitho, Stanley Gichuhi Mutura, Rachel Wanjiru Kirumba, John Njuguna Kuria, Joseph Gaitho Kuria, Stephen Mutura Kuria, Simon Ndungu Mutura, Jackson Kimani Kuria, Ruth Wambui Mutura, Joyce Waithira Kuria and John Njoroge Kuria misrepresented facts as the persons surviving MUTURA KURIA (Deceased).
- b. That the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents herein knew the existence of CECILIA WANJIRU NJENGA (the Applicant herein) who is a daughter of MUTURA KURIA (Deceased) and who to date survives the deceased herein.
- c. That it is only just that Grant of Letters of Administration intestate issued to DAVID KIRUMBA MUTURA (the 1<sup>st</sup> Respondent herein), DOUGLAS KARANJA MUTURA (the 2<sup>nd</sup> Respondent herein), JOHN GAITHO MUTURA (the 3<sup>rd</sup> Respondent herein) and DAVID MUNGAI KIRUMBA (the 4<sup>th</sup> Respondent herein) on 30<sup>th</sup> June 1992 and/or the Certificate of Confirmation of Grant issued on 31<sup>st</sup> July 2013 be annulled and/or revoked and the Honourable Court do issue directions on how the matter should proceed.
- d. That the estate has not been distributed and no asset has passed to a third party as yet.

The Respondents though having been duly served with the said application they never responded. The service was confirmed by **BONIFACE MBUGUA KIMOCHU** through an affidavit of service dated 22<sup>nd</sup> October, 2018.

## HEARING

The oral hearing commenced on 23<sup>rd</sup> October 2018. The first on the stand was Cecilia Wanjiru Njenga in absence of the Respondents though duly served. She testified that she is a beneficiary of the said estate being a daughter of the Deceased. Her evidence was that her father had four (4) wives namely; Muthoni Jane (4 children), Lucy Muthoni (2 children), Serah Mukuhi (5 children) and Ruth Wambui (5 children).

She stated her mother was Sarah Mukuhi and her children were; Cecilia Wanjiru (I am the only one at home), Douglas Karanja, Stanley Ndungu, Njoki (married) and Wangare (married). She pleaded with the court to assist her to stay where she has been living with her children at Muguga and that she has eight (8) children and grandchildren and from the Certificate of Confirmation of Grant she was left out.

She testified that Douglas Karanja Mutura her brother has been harassing her, evicting her and abused her and he said that he would demolish her kitchen so as to bring in his building materials so as to build. She stated that he made those remarks at the D.O's office. She averred that she has been living at the same place where her parents left her for almost 45 years now and she said she fears for her life.

On the same day the court gave the following interim orders:-

- a. **That the Grant of Confirmation of 31<sup>st</sup> July 2013 by Hon. W. Musyoka amended/rectified on 18<sup>th</sup> March 2015 by Lady Justice R. Ogo further amended on 9<sup>th</sup> July by Lady Justice Muigai are all suspended / withdrawn pending the Ruling/Judgment of the Court on 30<sup>th</sup> October, 2018.**
- b. **That since the Administrators/Beneficiaries were served and failed to attend Court today as confirmed by affidavit of service of 23<sup>rd</sup> October, 2018 and the hearing proceeded exparte, the Administrators/Beneficiaries specifically Douglas Karanja Mutura himself, his agents/servants/proxies shall not interfere in any manner whatsoever with the residence of the Applicant Cecilia Wanjiru Njenga daughter of Mutura Kuria (Deceased) until hearing and determination of this matter on 30<sup>th</sup> October, 2018.**

c. That the Chief of Kanjeru/Kikuyu Town, the D.O of Kikuyu and OCS/OCPC/Kikuyu Police Station to supervise and enforce the orders.

d. That any aggrieved party to attend court on 30<sup>th</sup> October 2018 when the Ruling/Judgment of the matter shall be delivered at 2.30pm.

#### ISSUES FOR DETERMINATION

1. Should the Grant and Certificate of Confirmation issued herein be revoked / annulled?
2. Is the Applicant a Dependant / Beneficiary of the Deceased's Estate?

#### THE LAW

The **Law of Succession Act** does not put a time line within which a person can file an application for revocation of grant. Section 76 particularly provides that;

**“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”**

The present application is brought under **Section 26 of the Law of Succession Act** which empowers this Court to make provision for dependant not adequately provided for by will or intestacy. To succeed therefore one must firstly prove that they are dependants and secondly that adequate provision was not made for them by the disposition of the deceased's estate in this case by the law relating to intestacy. The meaning of dependant is given by Section 29 of the Act which states:-

**“29. For the purposes of this Part, “dependant” means-**

- a. the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to this death;
- b. such of the deceased's parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
- c. where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death”

**Article 27** of the **Constitution** prohibits any form of discrimination based on race, sex, marital status or culture. Indeed **Article 27(3)** of the **Constitution** specifically provides that

**'women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres'.**

**Section 29(a)** of the Act in recognizing '**children**' of the deceased as dependants does not classify those children as sons, daughters, married or unmarried. This Court hence concurs with the holding of Makhandia, J. (as he then was) in **IN RE ESTATE OF SOLOMON NGATIA KARIUKI (DECEASED) (2008) ECLR** AT PAGE 8 where he stated that:

**'The Law of Succession Act does not discriminate between the female and male children or married or unmarried daughters of the deceased person when it comes to the distribution of his estate. All children of the deceased are entitled to stake a claim to the deceased's estate. In seeking to disinherit the protestor under the guise that the protestor was married, her father, brothers and sisters were purportedly invoking a facet of an old Kikuyu Customary Law. Like most other customary laws in this country they are always biased against women and indeed they tend to bar married daughters from inheriting their father's estate. The justification for this rather archaic and primitive customary law demand appears to be that such married daughters should forego their father's inheritance because they are likely to enjoy inheritance of their husband's side of the family.'**

In **ALBERT IMBUGA KISIGWA VS RECHO KAVAI KISIGWA SUCCESSION CAUSE 158 OF 2000**, Judge Mwita stated as follows;

**[The] power to revoke a grant is discretionary power that must be exercised judiciously and only on sound grounds. It is not a discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the Court to invoke Section 76 and order to revoke or annul a grant and when a Court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased's estate and ensure that the action will be for the interest of justice.**

In the instant case, the Applicant was/is daughter to the deceased and has lived on the said suit property for 45 years. Her name was not included in the names of beneficiaries of deceased's estate on filing petition for grant of letters of administration intestate contrary to **Section 51 (1) (g) LSA Cap 160**.

Secondly, although the deceased died in 1977 before coming into force of Law of Succession Act Cap 160 in 1981, the applicable law was Kikuyu customary law. Since the Applicant was not married and lived on the same land during their parents' lifetime; she was/is entitled to share of the deceased's estate.

It is not denied she is daughter of deceased and therefore dependent/beneficiary of the estate of the deceased. Despite service, the Respondents/Administrators did not appear in Court or send representation, give reasons, information or circumstances for the Court to consider. The application is not opposed and the testimony by PW1 Cicilia Wanjiru Njenga is not controverted. Therefore, in light of the above, this Court finds that the grant, confirmed grant and rectified grants were irregularly and illegally obtained by nondisclosure of beneficiaries and their consents to distribution of deceased's estate.

#### **DISPOSITION**

- a. That the grant made herein on 30<sup>th</sup> June, 1992 to David Kirumba Mutura, David Mungai Mutura and Douglas Karanja Mutura and Gaiho Mutura and confirmed on 31<sup>st</sup> July 2013, rectified on 18<sup>th</sup> March 2015 and further rectified on 9<sup>th</sup> July 2018 be and is hereby revoked;**
- b. That the orders made therein confirming the said grant are hereby set aside, and the certificate of confirmation of grant made on the basis of the said orders is hereby cancelled;**
- c. That all and any transactions carried out on the basis of the said confirmation orders and certificate of confirmation of grant are hereby nullified and any assets that have been subdivided and/or transferred to any person are hereby cancelled and the said assets shall be reverted to the name of the original owner, the deceased herein, MUTURA KURIA;**
- d. That the survivors of the deceased are hereby given leave to agree on appointment of fresh administrators excluding the current administrators David Kirumba Mutura, David Mungai Mutura, Douglas Karanja Mutura and John Gaiho Mutura.**
- e. The beneficiaries after appointment of new administrators to consult and agree with beneficiaries on proposed distribution of deceased's estate and file summons for confirmation of grant. If any of the party is opposed to file protest to be heard by the Court.**
- f. Each party to bear own costs.**

**DATED, SIGNED and DELIVERED at NAIROBI this 1<sup>st</sup> DAY OF NOVEMBER, 2018.**

**M.W.MUIGAI**

**JUDGE –FAMILY DIVISION –HIGH COURT**

**IN THE PRESENCE OF:**

**CICILIA WANJIRU NJENGA THE APPLICANT IN PERSON**