



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 263 OF 2014**

**IN THE MATTER OF THE ESTATE OF MBOGO KIBIRA NJAGI Alias MBOGO (DECEASED)**

**AND**

**SOPHIA WANJIRA MBOGO.....PETITIONER**

**V E R S U S**

**ROSE WANGECHI MUTHIKE.....1<sup>ST</sup> PROTESTOR/APPLICANT**

**NANCY WAKERA KINYUA.....2<sup>ND</sup> PROTESTOR/APPLICANT**

**JUDGMENT**

1. The petitioner Sophia Wanjira Mbogo was issued with letters of administration of the estate of Mbogo Kibira Njagi who was her husband on 30/04/2015. Citation to accept and refuse letters of administration was served on Rose Wangechi Muthike and Judy Wakuthii Munene who entered appearance on 30/05/2014.

2. Thereafter the petitioner proceeded to apply for confirmation of grant on 03/06/2015 since no objection was raised. The court confirmed the grant on 15/06/2015 whereby the whole share of the deceased estate **Land Parcel No. Inoi/Ndimi/27** was to be given to the petitioner.

3. Subsequently the protestors proceeded to file an application dated 24/06/2015 claiming that they were served with the application for confirmation of grant on 15/06/2015 when the matter came up for hearing. That their advocates had left to attend another court outside Kerugoya and was not aware of the hearing. They proposed that the deceased's estate be shared as follows;

- Rose Wangechi Muthike and Judy Wakuthii Munene – ½ share jointly
- Sophia Wanjira Mbogo – ½ share

4. The court granted status quo in respect of the deceased's estate pending hearing of the application of revocation interparties on 07/07/2015.

5. The protestor filed a supplementary affidavit on 02/02/2016 stating that despite the status quo order, the petitioner proceeded to sub-divide the estate among her children and one grandson as follows;

- Sophia Wanjira Mbogo - widow **Inoi/Ndimi/3017 and 3018**
- Peterson Karimi Mbogo – son **Inoi/Ndimi/3015**
- Florence Wakaria Mbogo – daughter **Inoi/Ndimi/3016**
- Marclus Kimotho Mbogo – son **Inoi/Ndimi/3019**
- David Kinyua Wangui – grandson **Inoi/Ndimi/3020**

6. They proposed that the estate be distributed equally between the deceased children as follows;

- Sophia Wanjira Mbogo - widow
- Peterson Karimi Mbogo – son
- Florence Wakaria Mbogo – daughter
- Marclus Kimotho Mbogo - son

- Rose Wangechi Muthike - daughter
- Judy Wakuthii Munene – daughter

7. The respondent Sophia Wanjira Mbogo had filed a pre-liminary objection to the application dated 24/6/2015 on the ground that the application did meet the requirements of Section 76 Law of Succession Act for revocation or annulment of the grant. The preliminary objection was dismissed in a ruling of this court dated 5/10/2017. The respondent did file further pleadings to oppose the application. The application was therefore not opposed.

8. The applicants were seeking an order that the grant issued to Sophia Wanjira Mbogo be annulled or revoked.

**Issues arising;**

**Revocation of Grant.**

**Section 76 of the Law of Succession Act Cap 160** states;

*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—*

*a. that the proceedings to obtain the grant were defective in substance*

*b. that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case.*

*c. that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently*

In **Jamleck Maina Njoroge v Mary Wanjiru Mwangi [2015] eKLR**

The court stated;

***“The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”***

9. The protestors have stated that the proceedings to obtain the grant were defective in substance since the petitioner failed to serve them with the application for confirmation of grant in good time. Serving them on the hearing date did not give the protestors sufficient time to file their reply and/or attend court since the advocate was indisposed. In addition they stated that they are daughters of the deceased but have been deprived of their rightful inheritance by the petitioner who is their step-mother. This was confirmed by the letter from the chief.

10. The petitioner did not file any response therefore the application is unopposed. In her application for confirmation of grant she stated that the deceased was survived by one widow and five children therefore further confirming that the protestors are dependants of the deceased.

12. The applicants have made out a case for the revocation of grant. The record shows that the parties were negotiating but did not reach a consent on distribution. The revocation of grant will ensure that distribution of the estate would cater for the protestors who were not given a share though they were beneficiaries entitled to a share of the estate. I find that the application has merits. I allow it and order as follows:

- The grant confirmed on 15/6/15 is revoked.
- The estate of the deceased shall be distributed equally among the widow of the deceased and the children who include the two protestors.
- Costs shall be in the cause.

**Dated at Kerugoya this 13<sup>th</sup> day of December 2018.**

**L. W. GITARI**

**JUDGE**