



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**SUCCESSION CAUSE NUMBER 232 OF 2016**

**IN THE MATTER OF THE ESTATE OF CHARLES GIKUHI SIKAMOI.....(DECEASED)**

**ANNASTACIA WAITHERA WACHEKE.....APPLICANT**

**VERSUS**

**JOEL KANI KIKAMOI.....RESPONDENT**

**RULING**

1. This ruling is in respect of the summons for revocation or annulment of grant dated 29/8/2016.

2. Vide that summons, Annastacia Waithera Wacheke (applicant) seeks orders;

**1. THAT this application be certified as urgent and the same be heard on priority.**

**2. THAT the grant of letters of administration issued to Joel Kani Sikamoi on 26<sup>th</sup> June, 2016 be revoked and or annulled.**

**3. THAT the costs of this application be provided for.**

3. The application is supported by the affidavit of the applicant and on grounds;

(a) THAT the applicant herein is the legal and lawful wife of the late Charles Gikuhi Sikamoi who died on the 22<sup>nd</sup> day of March, 2014.

(b) THAT the Court on 7<sup>th</sup> March, 2016 in Nakuru Succession Cause Number 853 of 2015 citation proceedings directed that the applicant herein filed for letters of administration.

(c) THAT pursuant to the said orders, the applicant herein filed Nakuru Succession Cause Number 226 of 2016 in the matter of the estate of the late Charles Gakuhi Sikamoi and gazettement of the same was done in August, 2016.

(d) THAT despite full knowledge of the fact that the Applicant herein had filed a Succession Cause, the respondent herein proceeded to file this Succession Cause over the same estate and further obtained a grant without the knowledge and or service to the Applicant herein.

(e) THAT as a result of the foregoing, the grant and the proceedings in this Succession Cause are defective in substance.

(f) THAT the grant was obtained fraudulently by making of false statement, untrue allegation and or concealing from the court the assets of the deceased and their true value.

(g) THAT the respondent and the applicant have had conflict since the death of the deceased herein and the Respondent herein intends to use the said grant to oppress and further disinherit and or interfere with the interests of the Applicant herein and her daughter who is still a minor.

(h) THAT the respondent herein is not a beneficiary neither is he a dependant of the late Charles Gakuhi Sikamoi and his interest in the estate of the deceased are only intended to prejudice the applicants rights and that of her daughter.

(i) THAT in the interest of justice this application ought to be allowed.

4. The gravamen of the application is that the grant issued to the respondent in **High Court Succession Cause Number 232 of 2016** should be revoked since the applicant already petitioned for a grant in **High Court Succession Cause Number 226 of 2016** after being ordered by court to do so in citation proceedings being **High Court Succession Cause Number 853 of 2015**.

5. The respondent did not inform the applicant of the filing of **High Court Succession Cause Number 232 of 2016**.

6. It is urged that the respondent is not a beneficiary neither was he a dependant of the deceased.

7. The application is opposed and in a replying affidavit, the respondent avers that he applied for grant of letters of administration where he included the applicant as a co-administrator. He adds that the applicant applied for letters of administration without the consent of the respondent.

8. He lays a claim on two (2) motor vehicles being motor vehicle registration numbers KBY 247W and KBW 853U.

9. Both parties filed written submissions.

10. I have had occasion to consider the application, the supporting affidavit and grounds as well as the replying affidavit. I have taken into account learned submissions of counsel.

11. The issue for determination is whether the applicant has established the threshold for revocation of the grant herein.

12. **Section 76 of the Law of Succession Act** provides;

**“S. 76. 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;**

**(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either -**

**(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or**

**(ii) to proceed diligently with the administration of the estate; or**

**(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or**

**(e) that the grant has become useless and inoperative through**

13. Other than stating that the applicant was aware of the filing of the petition and she refused to sign the petition, no evidence is offered on how such communication was made to her.

14. The respondent readily contradicts himself when in the same replying affidavit he states that immediately after the funeral of the deceased herein, the applicant left home and never returned.

15. He goes on to add that the applicant changed her phone number and so communication between the respondent and the applicant ceased. How, then, was the filing of the High Court Succession Cause Number 232 of 2016 notified to the applicant. The respondent is less than candid in his replying affidavit.

16. Matters are aggravated by the existence of High Court Succession Cause Number 226 of 2016 filed by the applicant on 7/4/2016. This was before the respondent filed cause number 232 of 2016 on the 11/4/2016.

17. This is an affirmation that the applicant complied with orders of court to take out letters of administration.

18. The applicant has priority over the respondent in the matters related to the estate of the deceased and the applicant having already filed for letters of administration in High Court Succession Cause Number 226 of 2016, the letters issued to the respondent cannot stand.

19. I am satisfied that the proceedings to obtain the grant were, for reasons given, defective in substance and concealed material facts.
20. Further, there is a substantive cause for the administration of the estate of the deceased being Nakuru High Court Succession Cause Number 226 of 2016 where the person ranking higher in priority had applied for grant.
21. It is only fitting, therefore, that the grant issued to the respondent herein be revoked.
22. I allow the summons dated 29/8/2016 and make the following orders;
- 1. The grant of letters of administration issued to Joel Kani Sikamoi on 26/6/2016 is revoked.**
  - 2. The respondent to return to the Deputy Registrar the original grant for cancellation.**
  - 3. The respondent be served with the pleadings/proceedings in High Court Succession Cause Number 226 of 2016 and if so desired to lodge any claims he may have therein.**
  - 4. The applicant shall have the costs of the summons.**

**Dated and Delivered at Nakuru this 11<sup>th</sup> day of December, 2018.**

**A. K. NDUNG'U**

**JUDGE**