



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1269 OF 2013

IN THE MATTER OF THE ESTATE OF MARGARET NDUTA MAINA (DECEASED)

ESTHER NJOKI NDIRANGU.....1ST APPLICANT

AMOS KINUTHIA NDIRANGU..... 2ND APPLICANT

V E R S U S

PENINAH NYAMBURA MAINA.....1ST RESPONDENT

JAMES MWANGI MAINA.....2ND RESPONDENT

JUDGMENT

PLEADINGS

The deceased Margaret Nduta Maina died on 21st January 2013, Penina Nyambura Maina and James Mwangi Maina as deceased's sister and brother respectively, petitioned for grant of letters of administration and were issued with the same on 5th September 2013 in this instant Court file. They disclosed L.R. No 209/4401/395 as the only asset that comprised of deceased's estate.

Subsequently, Peter Ndirangu Kinuthia as deceased's brother in **Succession Cause No. 490 of 2013**, who earlier obtained limited grant *colligenda bona* for 3 months on 25th June 2014 to gather and collect assets that comprise of deceased's estate and obtain full grant. He petitioned this court for grant of letters of administration intestate on 4th May 2014. He outlined various assets;

- a) L.R. No. 209/2389/18; Pangani Mtoni Residential
- b) L.R. No. 209/2389/151; Pangani
- c) L.R. No. 209/2389/140; Pangani, Kalasinga
- d) L.R. No. 209/2093; Juja Road
- e) L.R. No. 209/4401/352; Makadara
- f) L.R. No. 209/4401/395; Makadara
- g) Nairobi Block 141/708; Mwiki
- h) Nairobi Block 141/707; Mwiki
- i) L.R. No. 2/603; Kilimani
- j) Motor vehicle Reg. No. KZB 533; Golf, Saloon
- k) Motor vehicle Reg. No. KAC 094E; Peugeot Pick-up
- l) Motor vehicle Reg. No. KAK 421N; Isuzu, Canter

- m) Motor vehicle Reg. No. KAN 446N; BMW, Saloon
- n) Shares with Mumias Sugar
- o) Shares at Kenya Aerotech
- p) Shares at Safaricom Limited
- q) Account No. 0671[XXXXXXX], Barclays Bank (K) Limited, Ruaraka
- r) Account No. 0671[XXXXXXX], Barclays Bank (K) Limited, Ruaraka
- s) Account No. 0671[XXXXXXX], Barclays Bank (K) Limited, Ruaraka
- t) Account No. 0710[XXXXXXX]; Equity Bank Limited, Githurai

(Total estimated value of Kenya Shillings Two Hundred and Forty Million

(Kshs. 240,000,000.00)

and attached valuation reports of the same. On 25th June 2014 Hon J L.Kimaru ordered consolidation of **Succession Cause 490 of 2014** be consolidated with **Succession Cause 206 of 2014** as they relate to the same estate and proceedings were instituted by the same Peter Ndirangu Kinuthia.

Peter Ndirangu Kinuthia died on 29th September 2014 and his widow and son, Esther Njoki Ndirangu and Amos Kinuthia Ndirangu sought grant of letters of administration in **Succession Cause 296 of 2015** which was granted on 30th July 2015.

APPLICANT'S APPLICATION

Esther Njoki Ndirangu and Amos Kinuthia Ndirangu filed application dated 25th January 2016. The application is brought under **Section 47 and 76 of the Law of Succession Act and Rule 44 of the Probate and Administration Act**. The applicants sought revocation of grant issued on 5th September 2013 and consolidation of **Succession cause no. 1269 of 2013 and 206 of 2014**.

The application is based on grounds that the respondents obtained the grant by fraudulently by making false statements with respect to the issue of dependency. That the petitioners are not dependents of the deceased hence proceedings in this cause are defective. That the petitioners are guilty of material non-disclosure with respect to the true dependents of the deceased. That the grant was obtained by means of untrue allegations or misrepresentation of facts on true dependents of the deceased. That in view of the glaring irregularities in the process of obtaining the same it is in the interest of justice that the said grant is revoked. That the petitioners have already filed the summons for confirmation of grant on 14th November, 2013 before the lapse of mandatory six months that should the court not grant orders sought the petitioners will proceed with the confirmation of the impugned grant rendering the application herein nugatory.

In her affidavit in support of the instant application, the applicant Esther Njoki Ndirangu, avers that she and Amos Kinuthia Ndirangu are the administrators of the estate of the late Peter Ndirangu Kinuthia who died intestate on 29th September, 2014. Prior to his demise Peter Ndirangu Kinuthia was the sole administrator to the estate of Margaret Nduta Maina in **HC Succession Cause No. 206 of 2014 and HC succession Cause No. 490 of 2014**. He avers that he was the sole dependent of the deceased. That it was during the pendency of this petition that it was discovered that there was another petition presented by Peninah Nyambura Maina in respect to the estate of the late Margaret Nduta Maina.

The Applicant explained at paragraph 8 of her affidavit that the deceased Margaret Nduta Maina was married to Evans Maina Mwangi. At the time of the said marriage Evans Maina Mwangi already had 4 children; Penina Nyambura Maina, James Mwangi Maina, Obadiah Eric Irungu and John Mukuha Maina. Evans Maina Mwangi died and his estate was administered through **Succession Cause No. 778 of 1990** and his property forming his estate was distributed to the late Margaret Nduta and his four children vide Consent dated & filed on 27th January 1999.

That the said succession cause was acrimonious with the children of the late Evans challenging Margaret Nduta's entitlement to a share of their late father Evan's estate leading to erosion of the relationship between Margaret and her step children as such the deceased did not retain any life interest of the properties as per consent dated 27th January 1999.

After this Evan's children and the deceased lead totally separate lives

and they did not even attend the deceased's funeral. That the late Margaret fully supported her late husband, Peter Ndirangu Kinuthia and as such he was the only true dependent of the deceased and the succession cause filed herein was done solely to disinherit the deceased's rightful dependents of the estate of the deceased.

The applicant, Esther Njoki Ndirangu in her affidavit of 6th October 2016 avers that the petitioners Peninah and James Mwangi were not dependents of the deceased as they were not maintained by the deceased prior to her death. That she only became aware of the petition in January 2016 hence the delay in challenging the same. She added that there was no time limitation in law for filing for letters of

administration. She avers that Peninah Nyambura Maina and James Mwangi Obadiah did not attend the deceased's burial nor were they involved in the deceased's burial arrangements. She avers that the applicant Peninah denied the marriage between the deceased and her late father resulting to the acrimonious proceedings in the succession cause relating to her father's estate in **HC Succession Cause 778 of 1990**. That the property **L.R. 209/4401/395 - Makadara** was distributed to the deceased from late husband's estate.

As per the annexed certificate of confirmation of grant annexed to her affidavit. She added that the estate of the late Peter Ndirangu Kinuthia had no connection with this matter nor Nairobi **Succession Cause No. 296 of 2014** which relates the estate of their late father.

RESPONDENT'S RESPONSE

The Respondent, Peninah Nyambura Maina, in her supplementary replying affidavit of 14th March 2017 denied allegations that Peter Ndirangu Kinuthia was a dependent of Margaret Nduta Maina within the meaning of **Section 29(b) of the Law of Succession**. There was no proof that he was brother to the deceased. Secondly, she stated that they rank in priority being the deceased's step-children within the meaning of **Section 29 (b) Law of Succession Act** and they need not to have been maintained to be dependents of the deceased. She avers that she was not informed of the passing of her step-mother and as such could not attend her burial. She alluded to the fact that according to the consent recorded in **Succession Cause no. 778 of 1990** between biological children of Evans Maina Mwangi and their step mother, Margaret Nduta Maina was to the effect that the deceased instead of being given a life interest over the properties as required by law, she got an outright transfer of one of the suit properties of the late Evans Maina Mwangi's property.

SUBMISSIONS

APPLICANTS SUBMISSIONS

The parties filed written submissions. The applicants contend that the grant issued to Peninah Nyambura Maina should be revoked as it was obtained fraudulently in that Peninah Nuyambura and James Mwangi Maina are not the dependents of the deceased and are guilty for material non-disclosure as to the real dependents/beneficiaries of the deceased's estate. She added that Peter Ndirangu Kinuthia was the only true dependent vide grant issued to him on 30th July 2015.

She identified 3 issues for determination namely;

- i) Whether the respondents are dependents for the purpose of succession and whether they rightfully applied for grant of letters of administration.
- ii) Whether the material non-disclosure and concealment of material facts in issuance of a grant calls for revocation.
- iii) Whether this cause should be consolidated with **HC Succession Cause No. 206 of 2014**

It was submitted that **Section 29(b) of the Law of Succession** provides,

“dependant means

(a)...

(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....”

It was submitted that Peninah Nyambura Maina had disdain for the deceased as per her affidavit dated 27th May 1992 filed by the Respondent in **Succession Cause No. 778 of 1990**. In the said affidavit the respondent has claimed that the deceased was not married to her late father. Further, that the Respondents were not supported financially by the deceased prior to her demise and in the absence of any proof of maintenance by the Respondent they cannot rightfully be considered as dependents. On this they relied on the case of In **RE. ESTATE OF DORCAS WANJIKU- DECEASED [2014] EKLK** where the court held that,

“The deceased died intestate in 2008 and therefore the law governing her estate ought to be Part V of the Law of Succession Act. Since she was survived by a spouse and children, the applicable provision should be Section 35 of the Law of Succession Act. The persons entitled to a share in her estate by virtue of this provision should be Peter Wanjama Theuri, Hannah Wangechi, Julius Maina, Rose Wangui, Jane Wambui and Stephen Kiragu. The stepchildren, that is to say Peter Muikunu, Geoffrey Maina and John Waironyi, are not children of the deceased and therefore they are not entitled to a share in her estate. The principal stakeholders in the estate of the deceased therefore are the widower and the deceased's biological children.”

It was submitted that the respondents being the step children of the deceased and not previously maintained by the deceased at the time of her demise do not qualify as dependents and cannot rightfully apply to be administrators of her estate. Further that the respondents made false statements when the respondents claimed that the deceased died intestate and was survived by Peninah and James.

That Section 76 of the Law of Succession Act provides,

“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 ...’

That the 2 Applicants concealed the existence of and left out Peter Ndirangu Kinuthia her brother as a dependent. That being a brother to the deceased, Peter Ndirangu Kinuthia was a dependent and rightful person to have applied for letters of administration.

Section 66 Law of Succession Act provides;

“ When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice, to that discretion, accept as a general guide the following order of preference –surviving spouse or spouses with or without association of other beneficiaries; other beneficiaries entitled in intestacy, with priority according to their respective beneficial interests as provided by Part V; the Public Trustee; and creditors.”

Section 39 of the Law of Succession Act which provides as follows:-

“(1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority-

a) father; or if dead

b) mother; or if dead

c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none

d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none

e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.

(2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the state, and be paid into the Consolidated Fund.”

It was submitted that the respondents did not take appropriate steps under the law when they sought for grant of letters of administration in substitution to a person who had prior right to them. The respondents did not furnish the court with evidence that the late Peter Ndirangu Kinuthia who was the brother to the deceased had denounced his right to apply for the grant or consented in writing to the making of grant.

That there exists two grants of the same estate to the same estate 1st issued to Peninah Nyambura Maina and James Mwangi Maina issued on 5th September 2013 in **Succession Cause No. 1269 of 2013** and one issued to the late Peter Ndirangu Kinuthia issued on 30th July 2015 in **Succession Cause No. 490 of 2014**.

They relied on the case of **RE ESTATE OF LUDUSKA HORNIK PLATTO (DECEASED) [2012] eKLR**,

“ There cannot be two grants in respect of the same Estate. If the said Richard Momanyi O. Emmanuel has any interest in the Estate of the said deceased, the right course is to raise his claim in the cause in which the Grant was issued. To allow the Petition by Richard Momanyi O. Emmanuel to be sustained is to invite confusion in the Estate. The Petition for the Grant is as misplaced

as it is superfluous. I have no hesitation in striking it out with costs to the Applicants.”

Further in the case of **RE THE ESTATE OF MUIRURI GATUKU (DECEASED) [2014] eKLR**,

“it must be stated from the onset that there can only be one grant of representation to the estate of one individual. it is therefore untenable that there are two grants and sets of administrators in respect of the same estate.”

It was submitted that since there cannot be more than one grant the grant irregularly obtained by Peninah Nyambura Maina should be revoked. Further, it was submitted that it is in the interest of justice that the two Succession Causes; **HC Succession Cause No. 206 of 2014 and HC 1269 of 2013** be consolidated, since they relate to the estate of the deceased herein. On this she relied on the case of **CECILIA KIAMBAE & ANOTHER V EVANGELINE TIRINDI JOSPHAT & ANOTHER [2016] eKLR**,

“Where there are two or more suits or matters pending in the same court; Some common question of law or fact arises in both or all of them; or The rights or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions, or For some other reason it is desirable to make an order for consolidating the suits.”

It was submitted that this was a proper case requiring consolidation. Further that no prejudice will be suffered by the respondents if the said matters are consolidated, heard and determined together.

RESPONDENT’S SUBMISSIONS

The respondent in their submissions it was argued that no evidence has been adduced on the fraud allegations alleged against Peninah Nyambura Maina and James Mwangi Maina; further that the two rank higher in priority as step children of the deceased than the late Peter Ndirangu Kinuthia who is alleged to have been deceased’s brother. It was submitted that the Applicant has not completed the process of being confirmed as the administrators of his estate hence lack *locus standi* to file succession proceedings further, that they are not dependents of the deceased. That fact that the late Peter was a holder of the grant of the estate of the deceased did not outright make him a dependent of the deceased as the said grant was never confirmed by any court of law hence the only available option is for the applicant to file for an objection or protest in the cause and prove their allegations.

It was submitted that the respondents complied with the laid down law as per the table of consanguinity read with **Section 38 of the Law of Succession**. They sought to distinguish the cases cited by the applicant. In **RE THE ESTATE OF DORCAS WANJIKU (2014) eKLR**, and they argue the same is not persuasive that the said case is distinguishable in that the deceased left behind a spouse and her biological children. It was submitted that the property cited by the late Peter in his petition is property that was obtained by the deceased as her benefit from her late husband’s estate and hence her brother and kinsmen are not entitled to a share thereof upon her demise. That the allegation that Peter was a dependent of the deceased is a matter to be tested by oral evidence to be tested on cross-examination.

The Respondents relied on **Rule 7 of Probate and Administration Rules read with the 2nd Schedule of Section 39 Law of Succession Act** which confirms that the Petition by Peninah accords with and complies with Law of Succession Act. The Respondents contended that the application ought to be dismissed and the matter determined on the basis or oral evidence to confirm the Respondent’s disdain for the deceased and non-attendance to her funeral and moreso proof that Peter Ndirangu Kinuthia was brother to the deceased. The mere fact that Peter filed for a grant in Succession Cause 490 of 2014 does not confer rights to administrators of his estate; Esther and Amos Ndirangu.

It was emphasized that the deceased consented to the arrangement that denied her life interest in the properties of her late husband and happily accepted a life interest in prime property in Nairobi L.R.209/4401/395. This property was received by the deceased Margaret Nduta Maina as her benefit from the estate of her late husband’s estate Evan Maina Mwangi who was father to Peninah, James, late Obadiah and John Maina. The said property was not acquired by Margaret and her own brother and his kindred are not entitled to a share thereof upon her demise.

DETERMINATION

I have carefully considered all the evidence, the pleadings and the submissions put forward by the parties. In my view the issues for determination are;

- a) Whether the petition for Grant of letters of representation and the grant issued to Peninah Nyambura Maina and James Mwangi Maina were fraudulently obtained, due to material nondisclosure and/or concealment of facts.
- b) Secondly, who among the Applicants and Respondents has priority in law to be issued with the Grant of letters of representation of the deceased’s estate?
- c) Whether this cause **HC Succession Cause No. 1269 of 2013** should be consolidated with **HC Succession Cause No. 206 of 2014**.

The Petition filed by Respondents did not disclose the Petitioners relationship to the deceased. There is handwritten remark that they are brother and sister to deceased on the petition. Conversely, there are letters from local administration that the Petitioners are step children of the deceased. Therefore the totality of these discrepancies depict failure to comply with **Section 51 of Law of Succession Act and Rule 7 of Probate and Administration Rules** to disclose in the petition, the petitioners relationship to the deceased which was/is a material fact.

On the issue of non -disclosure of the deceased’s brother by Petitioners, they deposed that they did not know him. I find it a plausible explanation, that one cannot disclose information one is not aware of. From the pleadings, the deceased and petitioners were estranged after

her late husband's death. Each of the parties pursued independent and separate succession proceedings and obtained different grants for the same estate.

It is not in dispute that the deceased's spouse had pre-deceased her and at the time of her demise she had unfortunately not been blessed with her own biological children. Hence her estate devolves under **Section 39(1)(c) of the Law of Succession Act** and **Rule 7 Part 3 and 2nd Schedule of Probate and Administration Rules** which prescribe that where the deceased had /has no surviving spouse and /or children, then the next line as beneficiary (ies) of the estate after parents; are the deceased's brothers and sisters. In this case, Peter Ndirangu Kinuthia (deceased) as deceased's brother, first obtained limited grant and then filed for grant of letters of administration for the deceased and obtained the grant in **Succession Cause 206 of 2014** and **Succession Cause 490 of 2014** which were later on 26th June 2014 consolidated.

From the foregoing provision there is no inclusion of stepchildren as heirs of deceased's estate. If the deceased is survived by stepchildren, they fall within the category of dependents under **Section 29 of the Act** and ought to have been maintained by the deceased which in this case they were not; actually they parted ways awhile back as shown from the deposed affidavits by parties.

The late Peter Ndirangu Kinuthia was brother to the deceased. The Respondents challenged this fact and sought proof of the same through oral hearing. The deceased died in 2013 and the brother filed for limited grant and full grant in 2014. He obtained and attached requisite documents; the deceased's death certificate number 0016287, letter from local administration dated 5th April 2013, copies of title documents, pictures/photos of the properties that may comprise of deceased's estate and valuation reports. The petition was gazette for 30 days and no one came forward to challenge the same and/or file objection to making a grant. Until his death the Respondents did not raise any objection and upto date they have not filed any revocation of grant application challenging Peter Ndirangu Kinuthia's position that he was not brother to the deceased. To ask for an oral hearing to establish this fact at this late stage when he is no more and cannot defend himself is unfair and unjust at the juncture whereas the same was not raised during his lifetime. Secondly, he followed all legal steps required to obtain a grant and there was no objection. If he was not the deceased's brother, where and how did he obtain most legal documents regarding the deceased's estate which upto now none of the documents are declared to be forgeries?

This Court finds that in light of the documents attached by deceased's brother, Peter Ndirangu Kinuthia, death certificate, local administration letter, copies of title documents and valuation reports depict one who was in close contact with the deceased and was able to access the documents from the deceased. The Applicants; widow and son of the deceased's brother who is deceased here now annexed to their application various documents too; Replying Affidavit by Peninah Nyambura Maina filed on 29th May 1992 in **Succession Cause 778 of 1990**; Caveat filed by Peninah Nyamburah and James Mwangi Maina in **Succession Cause 428 of 1989**. Letter from James Mwangi to Peninah Nyambura Maina; Further Affidavit by Margaret Nduta Maina filed on 2nd February 1997 in **Succession cause 778 of 1990**; Certificate of Confirmation of grant in **Succession Cause 778 of 1990**; Grant issued to Margaret Nduta Maina, Silas Gachie and Peninah Nyambura Maina on 2nd April 1999; Consent dated 27th January 1999 filed on 1st April 1999 all filed in Succession Cause 778 of 1990. These documents depict intimate details in relation to the deceased and go a long way to confirm, that Peter Ndirangu Kinuthia is the deceased's brother, how else would he have obtained all these documents that he produced and his widow and son produced in relation to the deceased if he was not related to the deceased? If there is any tangible or cogent evidence to the contrary, the burden of proof shifts to the Respondents to adduce such evidence; that he was not brother of the deceased.

Since, Peter Ndirangu Kinuthia filed and obtained grant of deceased's estate before his death, the Applicants who obtained grant of his estate are rightful heirs of her estate and not the Respondents as provided by **Section 39(1)(c)**.

The Respondents had engaged in acrimonious succession proceedings in **Succession Cause No. 778 of 1990**. In the said proceedings the respondent had denied the deceased Margaret being her married to the father, however the court held otherwise. It is interesting to note that now that the deceased is dead Peninah Nyambura Maina moved the court with the aim to inherit from the deceased's estate. Following the acrimonious **Succession Cause 778 of 1990** of Evans Maina Mwangi; the Respondents after the said succession proceedings parted ways with the deceased. It baffles one why then the applicants would rush to court claiming to be the only surviving dependents of the deceased.

In their submissions however the respondents seek to obtain deceased's property as the same was obtained from Evan their late father. To me it appears that the Respondents main aim is to reach for that which was given to her by this Court in **Succession Cause No. 778 of 1990**. From the foregoing it is clear that the deceased died intestate and has left no surviving spouse or children of her own. The main and only issue for determination is what constitutes the estate of the deceased; what assets comprise of the deceased's estate and what is available for distribution to the beneficiaries of his estate. To that extent; the certificate of confirmation of grant of 4th June 1999 in **Succession Cause 778 of 1990** is instructive and as read together with the consent of 27th January 1999 that spell out what properties were distributed to the deceased absolutely to curtail life interest to the whole net estate as provided by **Section 35 & 36 of Law of Succession Act Cap 160**. What is the deceased's from her husband's estate is what constitutes her estate available for distribution. These issues shall be canvassed and ventilated at the filing of summons for confirmation of grant by the Applicants, and the Respondents as administrator in **Succession Cause 778 of 1990** may protest and the Court shall hear the Protest and determine way forward.

The applicant and respondents petitioned for grant of letters of administration as dependents of the deceased. Each of the parties refutes claims of dependency. From the affidavit annexed from the acrimonious succession proceedings **778 of 1990** for one Evan Maina Mwangi; it is evident there was bad blood between the deceased and her step children and they had not seen eye to eye until her demise. They also did not participate or even attend the deceased's funeral. This in my view goes to show the strained relationship the respondents had with the deceased.

After all is said and done the main issue for consideration is who is the rightful party to inherit the deceased's estate. In order to answer this question it is important to consider is the degree of consanguinity and affinity. **Section 29 Law of Succession** provides; dependants include;

“(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, half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death”

The **Black's Law Dictionary 8th edition** defines consanguinity as the relationship of persons of the same blood or origin. The same dictionary defines affinity as the relation that one spouse has to the blood relatives of the other spouse; relationship by marriage or any familial relation relating from marriage. The parties have not met the requirements of **Section 29** hence application for grant under the said section was defective. I find the grant so issued to the Respondents was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case and as such is revoked under **Section 76 of LSA**.

The Applicant has also sought the consolidation of **HC SUCCESSION CAUSE NO. 246 OF 2015 AND SUCCESSION CAUSE NO. 1269 OF 2013** for purposes of the administration of the deceased's estate. In the case of **LAW SOCIETY OF KENYA VS THE CENTRE FOR HUMAN RIGHTS AND DEMOCRACY, SUPREME COURT OF KENYA, PETITION NO. 14 OF 2013**, the Supreme Court of Kenya had this to say about consolidation of suits:-

“The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it”

The **Civil Procedure Rules 2010** mandate Courts in consideration of consolidation of suits to be guided by the following

- i. Do the same question of law or fact arise in both cases?**
- ii. Do the rights or reliefs claimed in the two cases or more arise out of the same transaction or series of transaction?**
- iii. Will any party be disadvantaged or prejudiced or will consolidation confer undue advantage to the other party?**

The matters in **HC SUCCESSION CAUSE NO. 246 OF 2015 AND HC SUCCESSION CAUSE NO. 1269 of 2013** herein relate to the same issues and facts which is the succession of the estate of the late Margaret Nduta Maina. As such I find that no prejudice will be occasioned to any party should the matter be consolidated. I hereby order consolidation of **HC SUCCESSION CAUSE NO. 246 OF 2015 AND HC SUCCESSION CAUSE NO. 1269 OF 2013** for purposes of being heard and determined together and the hearing shall be on the basis of the pleadings already filed in the two suits. This Court file shall be the lead file for purposes of filing any further pleadings and recording of proceedings. It is so ordered.

DISPOSITION;

- a) Grant of letters of representation and the grant issued to Peninah Nyambura Maina and James Mwangi Maina is hereby revoked.**
- b) Grant of letters of representation be issued to Esther Njoki Ndirangu and Amos Kinuthia Ndirangu; administrators of estate of Peter Ndirangu Kinuthia late brother of the deceased.**
- c) HC Succession Cause No. 1269 of 2013 and HC Succession Cause No. 206 of 2014 are hereby consolidated and the lead file shall be HC Succession Cause No. 1269 of 2013.**
- d) Any aggrieved party to lodge appeal.**
- e) Administrators to file Summons for Confirmation of Grant and the Respondent shall file Protests to be heard and determined by the court.**

DATED, SIGNED and DELIVERED at NAIROBI this 3RD DAY OF DECEMBER, 2018.

M.W.MUIGAI

JUDGE –FAMILY DIVISION –HIGH COURT