



**REPUBLIC OF KENYA**

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

**FAMILY DIVISION**

**SUCCESSION CAUSE 663 OF 2011**

**IN THE MATTER OF THE ESTATE OF VERONICA WAHU KAMAU(DECEASED)**

**GEORGE GITAU KAMAU.....APPLICANT**

**VERSUS**

**SAMUEL RUIRU KAMAU.....RESPONDENT**

**RULING**

**PLEADINGS**

The deceased died on 28<sup>th</sup> July 2006 as per the death certificate attached to the petition.

By an application of summons for revocation of grant brought under certificate of urgency filed on 13<sup>th</sup> November 2014, under **section 76 of the Law of Succession Act & Rule 44 (1) of the Probate and Administration Rule** and all other enabling provisions of law; the Applicant sought from Court the following orders;

- a. Pending hearing and determination of the Application the Administrator Respondent his servants and agents be restrained by temporary injunction from selling, transferring, alienating, disposing, subdividing and /or otherwise interfering with ownership of property known as Kijabe/Kijabe Block 1/371 and proceeds of Account number 0110973789800 Cooperative Bank.
- b. The grant issued on 20<sup>th</sup> September 2011 and confirmed on 6<sup>th</sup> March 2012 be revoked and annulled.

The Application is grounded on the following facts as outlined in the Applicant's supporting affidavit;

The Applicant, George Gitau is one of the 8 children of the deceased Veronica Wahu Kamau listed in paragraph 2 of the said affidavit. He is therefore one of the beneficiaries of the deceased's estate.

The Administrator/Respondent of the deceased's estate Samuel Ruiru Kamau filed a petition for grant of letters of administration intestate filed on 5<sup>th</sup> April 2011 and attached consents of all siblings. The Applicant resides in the US and visits Kenya. At the time the Petition was processed and filed; he was not in Kenya.

The Applicant did not sign the consent. He was not consulted or informed. The Respondent obtained the grant without the Applicant's knowledge and consent. The grant should be revoked.

The Applicant took issue with the assets that comprise of the deceased's estate. Kijabe/Kijabe Block 1/371 belongs to him and is not part of the deceased's estate. He sent money to his late mother to purchase land on his behalf and to hold it in trust for him. He sent Ksh. 250,000/= through Western Union to his siblings; Joseph Ngugi Kamau and Sarah Wambui Kamau to give his mother for purchase of the suit property.

This fact of ownership of the suit property is confirmed by Annah Njeri, Peris Wanjiru Wachiuri and Joseph Ngugi's affidavit filed on 13<sup>th</sup> November 2014, Elizabeth Nduta Kamau and Sarah Wambui Kamau's affidavit of 13<sup>th</sup> November 2014 and Esther Njeri Kamau's affidavit of 13<sup>th</sup> November 2014. All other siblings confirm that the suit property was bought by the Applicant and held by the deceased in his trust. Yet the Respondent obtained confirmation of grant on 6<sup>th</sup> March 2012 to distribute the suit property between him, the Applicant and one Joseph Ngugi Kamau. The property Kijabe/Kijabe Block1/371 is not part of the deceased's estate.

The proceeds in the deceased's Account, Co-operative Bank Account Number 01109737899800 were to be shared equally amongst all beneficiaries of the deceased. The Respondent filed an application on 5<sup>th</sup> March 2012 as administrator of the estate to access the said account and withdraw monies to pay school fees for Jane Wambui Wachiuri, daughter of one of the beneficiaries of the deceased's estate, Peris Wanjiru Kamau (deceased).

The Applicant and other siblings confirm from the pleadings that the Respondent did not pay school fees for Jane Wambui Wachiuri. He did not disclose or account for proceeds in the account or withdrawn from the account.

The Application filed under certificate of urgency on 14<sup>th</sup> November 2014 was served to the Respondent; he did not file a Replying Affidavit. The hearing dates subsequently obtained, he failed to appear in court. On 30<sup>th</sup> September 2015 this matter proceeded *ex parte*. The Respondent could not be traced as he is a Tour Operator. Instead he was served through registered Post as shown in the Affidavit of Service filed on 10<sup>th</sup> September 2015.

This Court finds that the grant issued on 20<sup>th</sup> September 2011 and confirmed on 6<sup>th</sup> March 2012 was irregular. The Respondent did not inform and obtain consent from the Applicant.

The asset that comprises the deceased's estate; the suit property belongs to the Applicant and is not available for distribution.

The proceeds in the deceased's bank account belong to all siblings as beneficiaries equally.

In the absence of evidence from the Respondent to controvert the Applicant's position, this Court grants the Applicant's prayers as follows;

### **FINAL ORDERS**

- 1. The grant issued to Samuel Ruiru Kamau on 20th September 2011 and confirmed on 6<sup>th</sup> March 2012 is revoked under Section 76 (b) & (c) of Succession Act.**
- 2. The suit property Kijabe /Kijabe/1/371 belongs to the Applicant George Gitau Kamau and is not part of the deceased's estate.**
- 3. A new / fresh grant shall issue to Joseph Ngugi Kamau & Sarah Wambui Kamau as administrators of the deceased's estate.**
- 4. The Respondent Samuel Ruiru Kamau to account to the beneficiaries proceeds of the deceased's account**

**Co-operativeBank Account Number; 01109737899800.**

- 5. In default, the administrators to distribute the balance of the proceeds in the said account to all other beneficiaries except the Respondent.**
- 6. Any party is at liberty to apply**
- 7. Each party to bear its own costs.**

**DELIVERED AND SIGNED IN OPEN COURT AT NAIROBI THIS 8<sup>TH</sup> DAY OF FEBRUARY, 2016**

**M.W. MUIGAI**

**JUDGE**

*In the presence of:*

.....  
.....

.....  
.....