



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MILIMANI**  
**SUCCESSION CAUSE NO. 683 OF 2011**  
**IN THE MATTER OF THE ESTATE OF MBUGUA NG'ANG'A (DECEASED)**

**R U L I N G**

1. The proceedings in this matter relate to the estate of Mbugua Ng'ang'a Ndungi, who died on 6<sup>th</sup> January 2002 at the age of eighty-six (86).
2. Representation to his estate was sought in a petition lodged in Kiambu SPMSCS No. 116 of 2007 on 20<sup>th</sup> June 2007 by Hannah Mumbi Mbugua, Elizabeth Wanjiku Mbugua and Emily Wambui Mbugua, in their respective capacities as widows of the deceased. He was expressed to have been survived by the three widows, and two daughters and six (6) sons. He was said to have died possessed of Ndumberi/Ting'ang'a/2188.
3. The petition was gazetted on 20<sup>th</sup> July 2007 vide Gazette Notice No. 6820. A grant of letters of administration intestate was duly made to the petitioners on 29<sup>th</sup> August 2007. The grant was confirmed on 7<sup>th</sup> April 2010 on an application dated 28<sup>th</sup> May 2008. A certificate of confirmation of grant was issued on 22<sup>nd</sup> April 2010, where Ndumberi/Ting'ang'a/2188 was to be shared equally between the three widows, with each widow getting an individual title. Ndumberi/Ting'ang'a/2190 was to be held in trust by Elizabeth Wanjiku Mbugua for the family as it was an access road.
4. On 8<sup>th</sup> March 2011, a Summons for Revocation or Annulment of Grant, dated 3<sup>rd</sup> March 2011, was lodged in this cause by Elizabeth Wanjiku Mbugua, one of the administrators, seeking revocation of the grant made in Kiambu SPMSCS No. 116 of 2007 and stay of execution of the certificate of confirmation of the same grant issued in the said cause. From the averments in her affidavit sworn on 8<sup>th</sup> March 2011, she grounds her application on the reason that she had not been notified by her co-administrators and her advocate that the matter was coming up for hearing and as a result the same proceeded *ex parte*, pleading that the sins of her advocate should not be visited upon her. She alleges that there had been an oral will which was not considered by the court when it passed judgement.
5. The application is opposed, for there is a reply to it in the form of an affidavit sworn on 9<sup>th</sup> August 2012 by one of the other administrators, Emily Wambui Mbugua, who is named in the application as a second respondent. It appears from the contents of the affidavit that the second respondent understands the applicant to be complaining about the process of the confirmation of the grant. She avers that the applicant protested before the lower court at the proposed distribution of the estate, whereupon the lower court directed that the protest be heard orally by *viva voce* evidence and gave a date for hearing. The matter was eventually heard on a date obtained at the registry *ex parte* but where a hearing notice had been properly served. Neither the applicant nor her advocate attended court on the due date. The court,

being satisfied that there had been proper service heard the matter *ex parte*, received oral evidence from witnesses and delivered a judgement. Thereafter, proceedings were initiated at the Kiambu court for execution of the relevant documents by the court to effectuate the confirmation orders after the applicant had refused to sign the papers.

6. Directions were given on 18<sup>th</sup> March 2013 to the effect that the application dated 8<sup>th</sup> March 2011 was to be determined on the basis of affidavit and written submissions. I have on record submissions filed in the matter by the applicant on 25<sup>th</sup> April 2013. There is no record of submissions filed by the respondents.

7. The application dated 3<sup>rd</sup> March 2011 is premised on section 76(a) of the Law of Succession Act. Section 76 provides as follows –

*‘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 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 may order or allow; 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 an account which is false in any material particular; or*
- e. *That the grant has become useless and inoperative through subsequent circumstances.’*

8. From the wording of section 76 of the Act, it is clear that applications for revocation of grant are to be entertained in three different circumstances. The first relates to the process of obtaining the grant. Revocation will be sought and granted if the process is defective and mired in fraud and deceit. The second instance concerns the process of administration of the estate. Revocation of grant will be sought in those cases where confirmation of grant is not sought timeously, or where there is lack of diligence in administration, or where there is non-compliance with court orders requiring filing of inventories and administration accounts. The third instance is where the grant has become useless and inoperative.

9. The application dated 3<sup>rd</sup> March 2011 and the affidavit drawn in its support are crafted in incoherent language. All that can be deduced from them is that there was a hearing that led to a judgement, and the applicant complains that she was not properly notified of the hearing and that the trial court did not consider certain matter in its judgement. The nature of the hearing complained about is not disclosed. It is not indicated when the said hearing was conducted and when the alleged judgement was delivered. In short, the application is vague and bare.

10. It is the respondents who actually throw light on what the application is about. The applicant is apparently, according to the respondents, complaining about the confirmation process. She appears to say

that she filed a protest to the confirmation application by the respondents, but her protest was not heard as the matter proceeded *ex parte* on a date when she had no notice of the hearing. She blames the respondents and her own advocate for her predicament. In their reply, the respondents endeavour to demonstrate that the applicant was the author of her misfortune.

11. I must state from the outset that the applicant has, in her application and in the submissions filed on her behalf by counsel, to show that her application comes within the purview of section 76 of the Law of Succession Act. It is not demonstrated that the grant on record made on 29<sup>th</sup> August 2007 was obtained in defective proceedings or was vitiated by fraud and misrepresentation. Neither is there an effort to show that the respondents did not apply for confirmation timeously or did not proceed with diligence to administer the estate or that they failed to comply with court orders requiring the filing of inventories or administration accounts. The applicant is not even saying that the grant has become useless and inoperative.

12. A grant of representation can only be revoked on the grounds set out in section 76 of the Act. A party who seeks revocation of a grant must strive to ground their application on the four corners of that provision. The jurisdiction to revoke a grant is exercisable by the court only if it is founded squarely on the said prescriptions.

13. The issues raised in the application dated 3<sup>rd</sup> March 2011; do not bring it within the borders of section 76 of the Law of Succession Act. The applicant is unhappy with the conduct and outcome of the protest proceedings. There is no provision under section 76 of the Act which would allow the High Court to intervene in such a situation. An application under section 76 founded on matters concerning the outcome of protest or confirmation is incompetent and ought not to be allowed to stand.

14. It would appear that where the High Court is invited to revoke a grant made by itself there could a slightly wider discretion to make orders that border on review of orders made earlier by itself in order to do justice to the parties. That this would be so in cases where a case is not made out for revocation of a grant but there are issues with respect to the administration of the estate which require the attention of the court.

15. Such discretion cannot be available where the grant sought to be revoked is that of a lower court. The jurisdiction of the High Court in such cases is restricted to the narrow issue of determining whether a case is made out for revocation or not, for its not seized of the substantive cause on the administration of the estate. Once it pronounces itself on the issue of revocation, it would cease to have jurisdiction and if it had called for the lower court file it must cause it to be returned to that court.

16. The jurisdiction conferred on the High Court with regard to grants made by a lower court is not akin to an appeal. It is not wide enough to allow the High Court to scrutinise decisions of the lower court which are not strictly subject to the revocation application, and therefore it should not venture make any orders on such matters or decisions.

17. The remedy available to the applicant, aggrieved as she was of the conduct and outcome of protest proceedings, was to apply for either the setting aside of the resultant order if there indeed is provision for that in the law, or to seek review thereof or lodge an appeal against the decision. The remedy provided in section 76 of the Act is not available to her in the circumstances.

18. In the end, it is my finding that the application dated 3<sup>rd</sup> March 2011 wholly without merit and is incompetent. It should be dismissed, and I do hereby dismiss the same with costs to the respondents. The court file in respect of Kiambu SPMSC No. 116 of 2007 shall be returned to the Chief Magistrate's Court registry at Kiambu for the final disposal of the matter. It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI this 5<sup>TH</sup> DAY OF FEBRUARY, 2016.**

**W MUSYOKA**

**JUDGE**

**In the presence of .....advocate for the applicant.**