



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**SUCCESSION CAUSE NO. 135 OF 2011**

**IN THE MATTER OF THE ESTATE OF NGUU MBAROMWE alias NGUU MBARIMWE**  
**(DECEASED)**

**MERCY NJERU NJUE.....APPLICANT**

**VERSUS**

**MILIAM IRIMA NGUU.....RESPONDENT**

**RULING**

1. The applicant seeks to have the grant of letters of administration made to Miliam Irima Nguu on 21st July 2011 to be revoked on the grounds that the grant was obtained fraudulently or it was obtained by means of untrue allegations of fact essential in a point of law to justify its grant. The application is supported by the grounds set out in the summons for revocation of the grant and the affidavit of the applicant dated 14th August 2012.

2. In ground 1, the applicant has stated that the petitioner/respondent failed, refused and/or neglected to disclose the the court that LR Ngandori/Kirigi/882 is registered in the name of Joseph Njue Nguu and not Nguu Mbaromwe. In ground 2, the applicant has deponed that the petitioner used an old green card of 1961 to mislead the court that the suit property belonged to Nguu Mbaromwe, when the current registration shows that it is registered in the name of Joseph Njue Nguo. In ground 3, the applicant has deponed that the petitioner has failed, refused and/or neglected to disclose that the suit property was the subject of the High Court succession cause No 67/2010, which was filed in the Embu registry, which cause he states is fully finalized. Additionally, he has stated that the grant issued and confirmed to the applicant lawfully transmitted the suit land to the applicant and her children.

3. In her supporting affidavit, she has deponed that she is the widow of Joseph Njue Nguu. She has further deponed that the suit land does not belong to the deceased because a copy of the green card which was used is misleading and outdated. She has further deponed that the petitioner/respondent filed the above succession cause seeking to obtain letters of administration of the estate of Nguu Mbaromwe. Furthermore, she has also deponed that she filed succession cause No. 67/2010 seeking letters of administration in respect of her husband's estate and was issued with letters of administration which were confirmed by the same court on 7<sup>th</sup> July 2011. Finally, she has deponed that the petitioner/respondent has cautioned the suit land which she asserts has denied her the right to distribute her husband estate in terms of the confirmed grant.

4. The petitioner/respondent has filed a 17 paragraph replying affidavit in opposition to the application for revocation of the grant. She has deponed amongst other matters to the following. She has deponed that she is the widow of the late Nguu Mbarimwe, who died on 25th October 1981. She has further deponed that Nguu Mbarimwe was the father of Joseph Njue Nguu (who is also deceased). She has also deponed

that Joseph Njue Nguu was the husband of the applicant. It is her affidavit evidence that her late husband (Nguu Mbarimwe) was the owner of LR Ngandori/Kirigi/882 to which she has annexed a copy of the land register marked as "MINI" as proof that he was the registered owner. She has also deponed that the late Joseph Nguu filed succession cause No 66/1982 in the Principal Magistrate's Court at Embu which was later transferred to the High court and designated as the succession cause No 977B/2002 in respect of the estate of Nguu Mbarimwe.

5. Furthermore, she has deponed that the letters of administration in succession cause No 66/1982 were never confirmed but the land parcel No. Ngandori/Kirigi/882 was inexplicably transferred to the late Joseph Nguu Mbarimwe in a manner that was illegal, unprocedural and irregular. It is her evidence that the transfer of the land to Joseph Nguu Mbarimwe was fraudulent, because it did not form part of the estate of Joseph Nguu Mbarimwe. She has deponed that the suit property did not belong to the estate of Joseph Njue Nguu and for that reason it should not have been included in the succession cause No 67 of 2010. She has also deponed that the late Joseph Njue Nguu did not consult the petitioner or the other members of her family before filing succession cause No 66/1982.

6. Finally, she has deponed that the suit land belongs to the estate of her late husband Nguu Mbarimwe and not Joseph Njue Nguu. Additionally, she has deponed that in terms of the Law of Succession she has priority over her son in applying for a grant of letters and administration in respect of the estate of her late husband and for that reason Joseph Njue Nguu should not have filed a succession cause in respect of his father's estate without the consent of the petitioner and other members of her family. She has deponed that she did not obtain the grant of letters and administration in respect of her husband's estate fraudulently and she did not conceal any material information.

7. Counsel for both parties filed submissions in support of their clients which I have considered.

8. In the light of the affidavit evidence of both parties and the applicable law, I find the following to be the issues for determination. First, who as between the petitioner/respondent and her late son Joseph Njue Nguu had priority in applying for letters of administration in respect of the estate of Nguu Mbarimwe. Second, whether or not the petitioner/respondent concealed any fact or allegation in obtaining the letters of administration in respect of her late husband (Nguu Mbarimwe). Third, whether the grant issued to the petitioner/respondent is outdated and was misleading to the court. Fourth, whether Joseph Njue Nguu was lawfully registered as the owner of the suit land.

9. I have considered the affidavit evidence of both parties and the applicable law. I find that the late Joseph Njue Nguu was registered as the owner of land parcel No Ngandori/Kirigi/882 on 3<sup>rd</sup> August 1983, before the expiration of the 6 months period that is mandated by **section 71 (1) of the Law of Succession Act**. It is clear from the evidence that the late Joseph Njue Nguu had the suit land registered in his name by transmission only two weeks after being issued with a grant of representation in respect of the estate of Nguu Mbarimwe. This registration was fraudulent and unprocedural since the grant had not been confirmed. It is also clear that Joseph Njue Nguu had not consulted the petitioner/respondent and other members of her family before filing a succession cause in respect of the suit land which belonged to the husband of the petitioner/respondent.

10. Furthermore, I find that in terms of section 66 of the Law of Succession Act, the petitioner/respondent being the wife of the late Nguu Mbarimwe had priority over every person to apply for letters of administration in respect of her deceased husband and not the late Joseph Njue Nguu. The list of priority in terms of section 66 runs first from the a spouse followed by other beneficiaries who are entitled to the estate and thereafter the public trustee and finally creditors as persons who are entitled to apply for a grant of letters of representation in respect of the estate of a deceased person.

11. I therefore find that the petitioner/respondent had priority over the applicant's husband namely Joseph Njue Nguu. I further find that the late Joseph Njue Nguu fraudulently obtained a grant of representation in respect of his late father's estate. Following the obtainment of the grant, he secretly had himself registered as the owner of the suit land. In the circumstances, I find that the issues raised by the affidavit evidence and the applicable law clearly indicate that the applicant's application is without merit.

Furthermore, it amounts to an abuse of the court process.

12. In the light of the foregoing, the application is hereby dismissed with no orders as to costs.

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this **7<sup>th</sup>** day of **DECEMBER 2016**

In the presence of Mr Okwaro for the petitioner/respondent and in the absence of Mr. E. Njiru for the applicant.

Court clerk Njue

**J.M. BWONWONGA**

**JUDGE**

**07.12.16**