



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 897 OF 1999**

**IN THE MATTER OF THE ESTATE OF WAIRIMU NJUGUNA alias RAHAB WAIRIMU  
NJUGUNA alias WANGOKO NJUGUNA - DECEASED**

**STEPHEN NJUGUNA RICHU..... APPLICANT/PROTESTOR**

**V E R S U S**

**DAVID MUNGE RICHU.....ADMINISTRATOR/RESPONDENT**

**RULING**

1. The application for determination is dated 28<sup>th</sup> December 2012. It seeks revocation of a grant made on 28<sup>th</sup> July 1999 and confirmed on 12<sup>th</sup> November 1999.
2. The same is brought at the instance of Stephen Njuguna Richu. The grounds upon which it is brought are set out on the face of the application and in the affidavit in support sworn by the applicant. It is founded on the general grounds that the proceedings to obtain the grant were defective, the grant was obtained by the making of false statements and concealment of matter from the court, and that the petitioner omitted to include some of the beneficiaries.
3. In the affidavit, it is pleaded that the applicant is not concerned about the proceedings relating to the making of the grant, but rather about the substitution of the initial administrator following the latter's death. He avers that his father, Rishu Njuguna Richu, was the initial administrator. When he died, he was substituted by the step brother of the applicant, one Daniel Munge Richu. His father was a polygamist, and the applicant appears to be saying that he ought to have been substituted by representatives from the two houses that make up his father's family. He also alleges that his father's sister, Njeri Njuguna, was alive, yet she was not disclosed in the petition. He is accusing David Munge Richu of mismanaging the estate.
4. In addition to the affidavit of the applicant there is also the affidavit of his mother, Njambi Richu. She avers to be the widow of the dead administrator and the mother of the applicant. She had no problem with the estate of her deceased mother-in-law being administered by her late husband as she expected that the estate of the deceased mother-in-law would devolve to her husband Rishu Njuguna Richu and his sister, Njeri Njuguna. Unfortunately, after her husband's death, her stepson substituted her husband without their knowledge and the said stepson is now disinheriting the rest of the family by posing as the only survivor of the deceased heir.
5. I have carefully perused through the court file and I have not come across any response by the administrator to the application dated 28<sup>th</sup> December 2012.

6. There is nothing in the court file to indicate that the application dated 28<sup>th</sup> December 2012 was ever served on the administrator. However, directions on the hearing of the application were taken on 22<sup>nd</sup> April 2013. The administrator was represented at the taking of directions.
7. The matter came up for hearing on 7<sup>th</sup> October 2014. There is an affidavit of service on record sworn on 6<sup>th</sup> October 2014. The same indicates that a hearing notice was served on counsel for the administrator. He received the notice under protest, saying that he had another matter coming up for hearing on the same date. He did not attend court on the appointed date, nor did he send anyone to hold his brief. The matter proceeded *ex parte*. Counsel for the applicant did not call oral evidence, she relied instead on the affidavits sworn in support of the application.
8. The matter relates to the estate of Wairimu Njuguna, who died on 27<sup>th</sup> November 1995. The affidavit sworn on 19<sup>th</sup> April 1999 in support of the petition for grant of letters of administration, filed in court on 29<sup>th</sup> April 1999, indicates that she was survived by two children – Richu Njuguna and Njeri Njuguna. Representation was granted to the son, Richu Njuguna, on 28<sup>th</sup> July 1999.
9. The grant made on 28<sup>th</sup> July 1999 was confirmed on 12<sup>th</sup> November 1999. The estate of the deceased devolved wholly upon the son, Richu Njuguna.
10. The confirmed grant has been rectified several times to address certain issues on the face of it:-
  - a. **It was rectified on 13<sup>th</sup> May 2003 by an order of Mbogholi – Msagha J. to refer shares in Kiamumbi Farmers Co-operative Society instead of Kiambu Farmers Co-operative Society;**
  - b. **It was rectified on 19<sup>th</sup> November 2007 by an order by Aluoch J. to have the name of the administrator read as Rishu Njuguna Richu instead of Richu Njuguna; and**
  - c. **It was rectified on 25<sup>th</sup> June 2012 by an order by GBM Kariuki J. to include two other names of the deceased, that is to say Wairimu Richu and Wangoko Njuguna.**
11. The initial administrator, Rishu Njuguna Richu, was substituted on 2<sup>nd</sup> November 2011 as administrator by David Munge Richu. The substitution was effected through a summons for rectification of grant dated 9<sup>th</sup> August 2011. The affidavit in support of the said summons was purportedly sworn by the initial administrator himself, who allegedly expressed a wish to be substituted by his son, David Munge Richu, due to old age and failing health.
12. The record before me indicates the current administrator of the estate of the deceased to be David Munge Richu, who was appointed on 2<sup>nd</sup> November 2011. The grant was confirmed on 12<sup>th</sup> November 1999 in favour of Richu Njuguna. It has been rectified several times, but the said rectifications have not altered the fact that the confirmation on record devolved the estate only to Richu Njuguna, also known as Rishu Njuguna Richu. There is nothing on record to indicate that the estate should devolve upon David Munge Richu. Indeed there is nothing on record to indicate that David Munge Richu is attempting to have the estate devolve upon himself solely.
13. The applicants plead that the initial administrator and beneficiary of the estate of Richu Njuguna is now dead. No proof has been provided that he is indeed dead.
14. My reading of the dispute is that the applicant is concerned more with the estate of Richu Njuguna, if indeed he is dead, than that of the deceased in respect of this estate, Wairimu Njuguna. Issues relating to the distribution of the estate of Richu Njuguna cannot be handled in this cause as the same relates to the estate of a different person.
15. Once the grant in this matter was confirmed on 12<sup>th</sup> November 1999 in favour of Richu Njuguna,

the property vested in him and the only thing remaining was the transmission of the assets to his name.

16.If the said Richu Njuguna died before the transmission was done then the persons who survived him ought to obtain representation to his estate and thereafter cause the estate of Wairimu Njuguna to be transmitted to the name of the estate of Richu Njuguna. Once that is done then the said assets shall be distributed in the matter of the estate of Richu Njuguna.

17.The applicant has brought out the name of Njeri Njuguna, a sister of Richu Njuguna, in his effort to demonstrate that there was an issue with the process of obtaining representation to the estate. I have noted from the record that Njeri Njuguna herself does not appear to be complaining. She has not sought revocation of the grant, neither does the applicant purport to have brought the application dated 28<sup>th</sup> December 2012 on her behalf.

18.I note from the record that she was named in the petition as one of the survivors of the deceased. She was named too as such in the summons for confirmation of grant dated 15<sup>th</sup> October 1999. That the proposed distribution did not include her is another matter. If she had issue with the distribution she should have raised it herself.

19.The summons dated 28<sup>th</sup> December 2012 invites me to revoke the grant made on 28<sup>th</sup> July 1999 and confirmed on 12<sup>th</sup> November 1999. It has not been demonstrated that the process of obtaining that grant was defective, nor that the grant was obtained fraudulently by the making of false statements or concealment of matter from the court, nor that any of the beneficiaries were omitted.

20.In the result, I hereby dismiss the said summons. Costs to be in the cause.

**DATED, SIGNED and DELIVERED at NAIROBI this 10<sup>TH</sup> DAY OF JULY, 2015.**

**W. MUSYOKA**

**JUDGE**

**In the presence of Mrs. Wainaina advocate for the Applicant.**

**No appearance for the Respondent.**