



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2568 OF 2008

**IN THE MATTER OF THE ESTATE OF MUIRURI MUIGAI alias MORRIS MUIRURI
(DECEASED)**

RULING

1. The proceedings herein relate to the estate of Muiruri Muigai, who died on 15th July 1966. Representation to his estate was sought in this cause through a petition lodged herein on 7th November 2008 by Teresiah Mumbi Ndung'u in her capacity as daughter of the deceased. She expressed herself to be the only survivor of the deceased. A grant was accordingly made to her on 25th February 2009.
2. The administrator lodged an application in court on 17th March 2007 for the confirmation of the grant, proposing that the entire estate devolves upon her solely. The application was placed before Dulu J. on 4th November 2009, where the administrator stated that she was the only child of the deceased, saying that her mother had predeceased her father. She was directed to file a letter from the Chief to confirm that.
3. It is not clear from the record whether the letter from the Chief was filed as directed by Dulu J. but on 29th December 2009 another application or confirmation of grant, of even date, was lodged at the registry. It indicated that the deceased was survived by three (3) children – Elizabeth Njeri Muigai, Peter Mburu Muigai and Stephen Waweru Muigai. Curiously the administrator did not list herself in the affidavit of 10th May 2010 sworn in support of the application of 29th December 2009 amongst the children of the deceased. She proposed that four of the assets devolve wholly upon her, with only one being shared equally among the three named children of the deceased. The record does not state what became of the application dated 17th March 2007 following the filing of the application dated 29th December 2009.
4. Anyhow, on 30th March 2010 an application dated 17th March 2009 was fixed for hearing on 19th May 2010. On 19th May 2000, the four persons named as beneficiaries or heirs in the application dated 29th December 2009 attended court. The grant was confirmed. There is on record dated 19th May 2010 a certificate of confirmation of grant reflecting that the estate devolved according to the proposals made in the application dated 29th December 2009.
5. On 1st December 2010, a Summons for revocation of the grant was lodged at the registry, dated 29th September 2010, by Elizabeth Wambui Njenga. She averred to be a daughter of the deceased and disclosed that there was another cause at the Kiambu Law Courts, being **Kiambu CMCS No. 138 of 2008**, wherein she was administrator of the same estate. She stated that the administrator in **HCSC No. 2568 of 2008** commenced the same while well aware of the pending proceedings at the Kiambu court for she had attempted in the Kiambu cause to have the grant

made in that cause revoked without success.

6. In her reply in the affidavit sworn on 22nd November 2010, the administrator in **HCSC No. 2568 of 2008**, admitted that the applicant was a daughter of the deceased and stated that she, the administrator, was a daughter-in-law of the deceased, being the wife of the deceased's only son, Muigai Muiruri alias Ndungu Muiruri. She claimed that she only got to know of the existence of the Kiambu case after she had failed the Nairobi cause.
7. The court file in respect of the Kiambu case, **CMCSC No. 138 of 2008**, has been availed. According to the documents on record, the deceased to whom it relates is called Muiruri Muigai alias Morris Muigai, who died on 15th July 1966. He was said to have had been survived by five (5) individuals, including Teresiah Mumbi Ndungu, the administrator respondent herein. A grant was made in the cause on 19th August 2008 to Margaret Nyambura and Elizabeth Wambui. When the administrators in that cause filed a summons for confirmation of the grant, the administrator respondent in this cause, Teresiah Mumbi Ndungu, filed a protest affidavit dated 25th February 2009. She followed that up with a summons for revocation of grant dated 27th February 2009 and filed in court on 2nd March 2009. The grant in the Kiambu cause is yet to be confirmed.
8. A grant may be revoked on the grounds set out in Section 76 of the Law of Succession Act. The grounds include circumstances where the grant is obtained in proceedings that are defective or where there is fraud or where there is concealment of important matter from the court.
9. The petition in **CMCSC No. 138 of 2008** was lodged in court on 23rd June 2008, while that in **HCSC No. 2568 of 2008** was filed on 7th November 2008. There was a full disclosure of all the survivors of the deceased in **CMCSC No. 138 of 2008**, not so in **HCSC No. 2568 of 2008**, where the administrator stated that she was the sole survivor, describing herself in the petition as daughter, whilst in reality she was a daughter-in-law. The proceedings in **HCSC No. 2568 of 2008** were no doubt shrouded in fraud, deceit and misrepresentation.
10. Without saying more, I am satisfied that the applicants in the application dated 29th September 2010 have established a case for the revocation of the grant made in this cause on 25th February 2009 to Teresiah Mumbi Ndung'u.
11. Accordingly I do hereby make the following orders:-
 - a. **That the grant of letters of administration intestate in respect of the estate of Muiruri Muigai made in this cause on 25th February 2009 to Teresiah Mumbi Ndungu is hereby revoked;**
 - b. **That the orders made in the cause on 19th May 2010 confirming the grant made on 25th February 2010 are hereby vacated and the certificate of confirmation of grant founded on the said orders is hereby cancelled;**
 - c. **That any transactions conducted on the basis of the certificate of confirmation of grant in respect of (b) above are hereby ordered revoked and annulled;**
 - d. **That the court file in respect of Kiambu CMCSC No. 138 of 2008 shall be returned to the Kiambu Law Courts for the finalization of the matter;**
 - e. **That the cause in HCSC No. 2568 of 2008 is hereby closed, the file to be taken to the archives; and**
 - f. **That the applicants shall have the costs of the application.**

DATED, SIGNED and DELIVERED at NAIROBI this 9TH DAY OF OCTOBER, 2015.

W. MUSYOKA

JUDGE