

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KIAMBU

SUCCESSION CAUSE NO. E248 OF 2021

IN THE MATTER OF THE ESTATE OF THE LATE PENINAH
WARURI MWANGI (DECEASED)

AND

IN THE MATTER OF THE REVOCATION OF THE GRANT ISSUED
IN GITHUNGURI SENIOR PRINCIPAL MAGISTRATE COURT
SUCCESSION CAUSE NO. 64 OF 2017

BETWEEN

JOSEPHINE NJOKI THUO GICHO.....
APPLICANT

AND

DAVID MBURU MWANGI.....1ST
RESPONDENT

JANE NGINA MWAN.....2ND RESPONDENT

AND

1. DANIEL GICHO MWANGI
2. NELPHAT NGATHA MWANGI
3. JOSEPH MBUURI MWANGI
4. ANNE NYAMBURA KARANJA.....
.....BENEFICIARIES

RULING

1. The Applicant has moved this Court for revocation of grant premised on a Summons of Revocation application dated 7th December, 2021 and seeks the following orders:-

- a) That this Court be pleased to revoke/annul the Grant of Letters of Administration issued to David Mburu Mwangi and Jane Ngina Mwangi on 19th October 2017 by Hon. C. Kutwa, PM (Githunguri).**
- b) The Court be pleased to revoke the appointment of the Respondents David Mburu Mwangi and Jane Ngina Mwangi as Administrators of the Estate of the late Peninah Warura Mwangi and appoint new joint Administrators as shall be mutually agreed by the parties herein within the timelines provided by the Court.**
- c) The Court be pleased to issue an order of injunction for the preservation of the entire estate and restrain the Respondents, their agents, servants, employees or any other person claiming under them or their instructions from in any way administering the estate including collecting, receiving any rents, distributing, selling, managing, operating, making any alterations, transfers, charges, mortgages or any other dispositions or in any other manner dealing with any and all of the assets of the estate.**
- d) The Court be pleased to issue a mandatory injunction directing and compelling the Respondents to disclose, render and furnish the Court under oath with a true, proper and accurate inventory of all the assets and liabilities of the deceased and to render a full and accurate account for all their dealings with the deceased's estate from the date of their appointment as administrators to date.**
- e) The Court be pleased to issue a mandatory injunction directing and compelling the Respondents to deposit into court all original documents of title as may be**

necessary for all assets owned by the deceased at the time of her demise.

f) The Court be pleased to direct the administrators of the estate to open an estate bank account for purposes of depositing, collecting and getting any and all of the moneys or proceeds accruing from the assets of the estate and making payments in respect of any liabilities accruing from the estate.

2. The Summons for Revocation of Grant is anchored on the Supporting Affidavit dated 7th December, 2021 sworn by ***JOSEPHINE NJOKI THUO GICHO***, the Applicant, stating as follows: -

a) The deceased passed on intestate on 27th March, 2017 and left the following children;

- i) David Mburu Mwangi;**
- ii) Jane Ngina Mwangi;**
- iii) Daniel Gicho Mwangi;**
- iv) Nelphat Ngatha Mwangi;**
- v) Mbuuri Mwangi;**
- vi) Anne Nyambura Karanja; and**
- vii) Josephine Njoki Thuo Gicho.**

3. The Respondents fraudulently commenced succession proceedings in respect of the estate of the deceased in Githunguri Senior Resident Magistrates' Court Succession Cause No.64 of 2017.

4. At the time the Respondents commenced the proceedings they did not inform the Applicant and her other siblings, ***ANNE NYAMBURA KARANJA, DANIEL GICHO MWANGI*** and

- NELPHAT NGATHA MWANGI** of the existence of the proceedings before the subordinate court in Githunguri.
5. The Applicant later realized that on 6th June 2017, the Respondents had petitioned the Principal Magistrate Court in Githunguri for the Grant of Letters of Administration Intestate in which they sought to administer the deceased's estate.
 6. Annexed to the Petition for Letters of Administration Intestate were forged Consents dated 22nd May, 2017 purported to have been executed by the Applicant, **ANNE NYAMBURA KARANJA, DANIEL GICHO MWANGI AND NELPHAT NGATHA MWANGI.**
 7. The consents were either forged by the Respondents or acquired through concealment of material facts. The Applicant reported the forgeries of the signatures at Githunguri Police Station.
 8. A Gazette Notice No.9155 dated 11th September, 2017 was issued on 15th September, 2017 of the existence of the proceedings in Githunguri Senior Principal Magistrates' Court Succession Cause No. 64 of 2017.
 9. The Respondents made an application by summons dated 20th September, 2017 for the Grant. In the supporting affidavit to the said summons dated 20th September, 2017, the respondents misled the court that thirty (30) days had lapsed since the publication of the Gazette by deposing that the mandatory thirty (30) days had lapsed. The Grant was issued on 9th October, 2017.
 10. On 18th October, 2017 the Respondents made an application by way of summons seeking the confirmation of the grant before

the expiry of six (6) months. On 19th October, 2017 the summons for confirmation of grant was heard, allowed as prayed and a certificate of confirmation of grant was issued.

11. The Applicant, **ANNE NYAMBURA KARANJA, DANIEL GICHO MWANGI AND NELPHAT NGATHA MWANGI** did not sign any of the court documents including the consent to the mode of distribution dated 18th October, 2017. Neither were they present before the court during the confirmation of the grant.
12. There was later an irregular amendment of the certificate of confirmation of grant adding several other properties without a formal application from any party to the proceedings.
13. The deceased had a vast estate at the time of her demise but the Respondents did not include an inventory of the deceased's estate at the time when they petitioned the subordinate court for the grant of the letters of administration.
14. **Sedco Valuers (K) Ltd** was instructed to conduct a Valuation Report on **LR No. 13330/409 (TR. No. 129804)** Roasters Area which is one of the properties owned by the deceased and prepared a valuation report which returned an open market value of the property to be **Kshs.66,000,000**. Another Valuation report by **Onjah Property Link & Management Agencies Company** returned a value of **13,500,000 for LR No. 1330/409**.
15. The total value of the two (2) properties of the deceased vast estate is in excess of **Kshs.66,000,000** and is in the tune of above **Kshs.100,000,000**. The jurisdiction of the subordinate courts in succession matters is limited by **Section 46 of the Law of Succession Act and Section 7(1)** of the Magistrates

Court Act to estates whose value does not exceed twenty (20) million Kenya shillings.

16. The proceedings in Githunguri Senior Principal Magistrates' Court **Succession Cause No.64 of 2017** were therefore defective for want of pecuniary jurisdiction and the grant issued is null *ab initio*.
17. Since their appointment as administrators on 27th March, 2017 the Respondents have not rendered any account of the rental incomes, bank statements and balances or the proceeds from the sale of coffee from the deceased's farms as is required of them to do.
18. The Respondents have failed, without any reasonable cause to administer the estate of the deceased faithfully and truthfully in the best interest of all the beneficiaries. They have wasted and mismanaged the estate to the detriment of the estate and the beneficiaries. They have further been involved in unlawful transactions of some assets of the estate without the knowledge of the beneficiaries or approval of the court.
19. One of the beneficiaries, **DANIEL GICHO MWANGI**, filed a brief Replying Affidavit dated 31st May, 2023 in support of the application stating the following:-
 - a) This Court has inherent powers to make such orders as may be necessary to meet the ends of justice to prevail and the Applicant urged the court to intervene and stop the wastage and unlawful alienation of the estate by the Respondents.

- b) This Court may at any time and from time to time require the personal representatives to render to the court a true account of the estate of the deceased.
- c) The beneficiary requested the court to order the Respondents to render a true account of the estate of the deceased from the date of her demise to date so that the court can see the extent of wastage and unlawful alienation of the estate that has occurred.

20. The 1st Respondent, **DAVID MBURU MWANGI**, filed a replying affidavit dated 8th March, 2022 stating the following: -

- a) This Court does not have power and jurisdiction to grant the orders sought in the instant application. The application seeks for substantive order for review and or setting aside yet this Court only has the jurisdiction to revoke the grant.
- b) All the beneficiaries had agreed that the Respondents be appointed as administrators of the deceased's estate and a consent was signed to that effect. The petition was gazetted and a grant of letters of administration was issued.
- c) The Respondents applied for confirmation of grant before the expiry of six (6) months and the same was granted.
- d) The mode of distribution of the deceased estate was agreed upon by all the beneficiaries and a consent was signed to that effect.
- e) The Applicant has not adduced evidence to prove that the value of the property exceeds Kshs.20,000,000. LR No.13330/409 has been valued at Kshs.13,500,000 having been transferred at a sum of Kshs.200,000 in 2009 which

falls within the pecuniary jurisdiction of the Magistrates' court.

- f) The Applicant's averment that the signatures were forged is an afterthought and the matter has not been conclusively dealt with to enable this Court to determine the matter one way or the other.
- g) Most of properties that belonged to the deceased's estate were earlier registered in the beneficiaries' father's name, **MWANGI THUO**, who died on 19th September, 1980. The properties only vested in the deceased to hold in trust for named beneficiaries after the process of succession was concluded in favour of the deceased in **Succession Cause No. 206 of 1982**. The names of the beneficiaries in the said succession cause does not include the Applicant.
- h) The mode of distribution in the application for confirmation of grant in the present case had to follow the spirit of distribution in **Succession Cause No.206 of 1982**. In the matter of the estate of **MWANGI GICHO**.
- i) Not all properties listed in the Applicant's affidavit belonged to the deceased. Some of the properties were jointly owned by the Respondent's father, **MWANGI THUO**, and other third parties.
- j) The Applicant had filed a similar application before the lower court **Githunguri Succession Cause No. 64 of 2017** which application is still pending for hearing.
- k) Before the deceased passed on she had distributed and transferred several plots to the rest of family members which plots the family members sold and wasted the

money. The family members now seek to benefit from the properties that the deceased had given to the Respondents.

- i) The deceased had taken a loan from KCB Bank Ruiru Branch in the sum of Kshs.21,000,000 which the 1st Respondent has been servicing from the proceeds of the rental income in apartments No. 409. It would therefore be prejudicial to the estate to grant the orders for injunction to stop collection of rent and payment of the loan as the estate would be at risk of being auctioned by the bank.

21. The 2nd respondent, **JANE NGINA MWANGI**, filed a replying affidavit dated 8th March, 2022 stating the following:-

- a) All the members of the family agreed on who were to commence the petition in **Githunguri Succession Cause No. No.64 of 2017.**
- b) Although there was an issue of forgery reported at Githunguri Police Station, investigation was not concluded and the matter was laid to rest.
- c) The issuance of letters of administration before the lapse of the thirty (30) days since publication of the Kenya Gazette was an oversight which was not prejudicial to the beneficiaries.
- d) All the beneficiaries were present before court at the time of confirmation of grant except that there was failure to include identity cards of some of the beneficiaries. There was neither irregular amendment of the certificate of the confirmed grant nor concealment of inventory of the deceased's estate.

- e) The list of assets enumerated in the Applicant's supporting affidavit is wrong as it purports to add some properties which are not in the name of the deceased. The deceased only owned a share of one third of some of the listed properties and she had also transferred some property to the 1st Respondent before her demise.
- f) The value of **L.R No.13330/409** is exaggerated by the Applicant as the valuation report by **Onjah Property Link and Management** gave it a value of Kshs.13,500,000 which was within the pecuniary jurisdiction of the lower court.
- g) The deceased left an unsettled loan of Kshs.21,000,000 at KCB Bank Ruiru branch which the 1st Respondent has been servicing from the proceeds of the estate.
22. The parties were directed to canvass the application by way of written submissions and the parties filed their respective submissions as summarized below.

THE APPLICANT'S SUBMISSIONS

23. The deceased passed on intestate on 27th March, 2017 and was survived by seven (7) children as follows:-
1. Josephine Njoki thuo (the applicant)
 2. Anne Nyambura Karanja (beneficiary)
 3. Daniel Gichio Mwangi (the 1st respondent)
 4. Nelphat Ngatha Mwangi (beneficiary)

5. David Mburu Mwangi (beneficiary)
 6. Mbuuri Mwangi (beneficiary)
 7. Jane Ngina Mwangi (the 2nd respondent)
24. The deceased left a vast estate including properties in Githunguri, Kiganjo, Nairobi, company shares, various bank accounts and motor vehicles. Before the family had finished mourning, the Respondents filed **Githunguri Succession Cause No. 64 of 2017** behind the other beneficiaries' backs with the intention of disinheriting their siblings.
25. The Applicant and the other beneficiaries discovered the Respondent's unlawful actions in 2019. They filed a Chamber Summons application dated 15th April, 2019 informing the Magistrate's court of the Respondents' unlawful actions of forging signatures and proceeding with the matter without their participation. On 28th January, 2020, one of the beneficiaries, **ANNE NYAMBURA KARANJA**, filed a Preliminary Objection challenging the lower court's jurisdiction to handle the matter.
26. The Chamber Summons application and the Preliminary Objection were not heard and determined by the lower court because the parties attempted an amicable settlement which was a trickery by the Respondents to continue to enjoy the proceeds of the estate. The instant proceedings were initiated on 7th December, 2021 to arrest the lower court's proceedings. There was no delay in bringing the instant proceedings. The Applicant cited **SALAT V INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION & 7 OTHERS (APPLICATION 16 OF 2014) [2014] KESC 12 (KLR) (4 July 2014) (Ruling)** where it was observed that unless the delay has caused

irreparable prejudice to the other party, justice will usually favour the action proceeding to a full trial on merits.

27. The jurisdiction of the subordinate courts in succession matters is provided under Section 48 of the Law of Succession Act and Section 7 of the Magistrates' Court Act. According to Section 7 of the Magistrates' Court Act, the pecuniary jurisdiction of a Principal Magistrate at the Githunguri Law Court was Kshs.10,000,000. In the Petition for letters of administration dated 22nd May, 2017 the Respondents falsely declared that the assets of the deceased were valued at Kshs.100,000 with no liabilities.
28. The numerous assets of the deceased cannot be valued less than Kshs.10,000,000. The Applicant presented a sample of a valuation for one of the deceased's properties, **LR 13330/409 (TR. No.129804) Roasters Area**, which was valued at **Kshs.66,000,000** in 2019. The Respondent's own valuation of the property indicated the value as Kshs.13,500,000 in 2020.
29. In the Respondent's Replying Affidavit dated 8th March, 2022 the Respondent averred that the deceased before her demise had taken a loan from KCB Bank of Kshs.21,000,000. This means that the estate is beyond the value of Kshs.21,000,000 and that the Respondents concealed this fact to the court when they stated that the estate did not have any liabilities. The lower court therefore did not have jurisdiction to handle the matter. The Applicant relied on **PHOENIX OF E.A ASSURANCE COMPANY LIMITED V S.M THIGA T/A NEWSPAPER SERVICE [2019] KECA 767 (KLR).**

30. The Applicants seeks that the court revokes the grant of letters of administration issued to the Respondents and also revoke their appointment as administrators to the estate of the deceased. Article 165 (6) of the Constitution grants this court supervisory jurisdiction over the subordinate courts and Section 47 of the Law of Succession Act grants the court the jurisdiction to entertain any application and determine any dispute under the Act and to pronounce such decrees and make such orders as may be expedient. The Applicant placed reliance on **IN RE ESTATE OF THE LATE M'THIGAI MUCHANGI (Deceased) [2020] KEHC 904 (KLR)**.
31. Section 76 of the Law of Succession Act grants this Court the power to revoke a grant of representation whether or not it has been confirmed when the grounds listed therein have been disclosed. The proceedings in **GITHUNGURI SENIOR PRINCIPAL MAGISTRATE'S COURT SUCCESSION CAUSE NO. 64 OF 2017** were defective in substance. The Grant was obtained fraudulently by the Respondents. The Respondents falsely misstated the value of the estate of the deceased hence the grant was obtained by means of untrue allegation of a fact essential in point of law to justify the grant. Further, the Respondents have not given an inventory or account of administration of the estate.

THE 2ND RESPONDENT'S WRITTEN SUBMISSION

32. After the demise of the deceased, all dependents agreed that the Respondents be appointed administrators of the estate. A

- petition was filed at Githunguri Law Courts vide **Succession Cause Number 64 of 2017**. The grant of letters of administration was issued and the Respondents applied for confirmation of grant before the expiry of six (6) months. All the beneficiaries were present before court and agreed to the mode of distribution.
33. There was an unexplained and inexcusable delay in filing the instant summons. The certificate of confirmed grant was issued by the lower court on 17th October, 2017. The summons for revocation was filed on 17th November, 2021. Further the Applicant had filed another application before the lower court which remains pending.
34. Equity aids the vigilant and not the indolent. The Applicant having slept on her rights for long, there was undue delay in bringing the summons before this court and the same should be dismissed with costs. The Respondent relied on **HENRY KIPRONO KOSGEY V WILLIAM KIPCHIRCHIR KOSKEY AND ANOTHER (2022)eKLR** where the court declined to revoke the grant on the grounds that there was inordinate delay in bringing the application for revocation.
35. The Applicant has not adduced evidence to show that the Principal Magistrate in **Githunguri Succession Cause Number 64 of 2017** lacked pecuniary jurisdiction. Two different valuations for LR 13330/409 were issued. The Applicant presented a valuation of Kshs.66,000,000 and the Respondents presented another of Kshs.13,500,000. The valuation report relied on by the Applicant constitutes expert evidence that this court is not bound by. The respondent relied

on **COLLECTOR V SHIVJI BHIMJI & 2 OTHERS Civil Appeal No.58** and **60 OF 1959 E.A AT 1063.**

36. According to Section 47 of the Law of Succession Act and Section 7 of the Magistrates Courts Act, the Chief Justice has power to appoint a magistrate to represent the High Court in succession matters. Such magistrates have enhanced powers as those of the High Court which powers also allow a magistrate court to handle matters which are in excess of the pecuniary amount. It is therefore erroneous for the Applicant to claim that *Hon. C. Kutwa*, the **Principal Magistrate** who issued the grant did not have powers to issue the grant without any evidence whether he falls under the category of magistrates who have enhanced jurisdiction.
37. The Applicant seeks to review the lower court proceedings in the instant application. Such an application can only be heard by the court that issued the impugned orders. The Respondent cited Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Act. The Respondent also relied on **GRACE AKINYI V GLADYS KEMUNTO OBIRI & ANOTHER Review Application No. 193 of 2015.**
38. The Applicant has not adduced evidence to warrant revocation of grant in in **Githunguri Succession Cause number 64 of 2017** in accordance with Section 76 of the Law of Succession Act. The Applicant's prayers for review, setting aside and revocation of the grant are misplaced, lack merit and are otherwise an abuse of the court process.

ISSUES FOR DETERMINATION

39. This application raises the following issues for determination;-
- a) Whether the Principal Magistrate in **Githunguri Succession Cause Number 64 of 2017** had the pecuniary jurisdiction to grant the letters of administration issued to the Respondents.
 - b) Whether the threshold for revocation of a grant has been fulfilled by the applicants.
 - c) The appropriate remedies.

ANALYSIS

Whether the Principal Magistrate in Githunguri Succession Cause Number 64 of 2017 had the pecuniary jurisdiction to grant the letters of administration issued to the Respondents

40. *Nyarangi JA* in the case of **OWNERS OF THE MOTOR VESSEL "LILLIAN S" VS. CALTEX OIL (KENYA) LTD [1989] eKLR** (*Nyarangi, Masime & Kwach JJ.A*) stated that jurisdiction is everything and that without it, a court has no power to make one more step.
41. The Court of Appeal in the case of **PHOENIX OF E.A. ASSURANCE COMPANY LIMITED V S. M. THIGA T/A NEWSPAPER SERVICE [2019] eKLR** succinctly stated: -

"Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first place. If a suit is filed without jurisdiction, the only remedy is to withdraw it and file a compliant one in the court seized of jurisdiction. A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied. Without jurisdiction, the Court cannot confer jurisdiction to itself."

42. Section 48 of the Law of Succession Act gives Magistrates powers to hear and determine succession causes in the following terms: -

“Notwithstanding any other written law which limits jurisdiction, but subject to the provisions of section 49, a magistrate shall have jurisdiction to entertain any application and to determine any dispute under this Act and pronounce such decrees and make such orders therein as may be expedient in respect of any estate the gross value of which does not exceed the pecuniary limit prescribed under Section 7(1) of the Magistrates' Courts Act.”

43. Based on the said provision, the jurisdiction of magistrates is attached to their pecuniary jurisdiction as stipulated in Section 7 of the Magistrates Court Act. In the said provision the highest pecuniary jurisdiction is that of the Chief Magistrate which is capped at Kshs.20,000,000. A cursory glance of the documents presented gives a glimpse of the estimate of the deceased's estate. It cannot be anything below Kshs.20,000,000. In fact the grant of letters of administration in **Githunguri Succession Cause No. 64 of 2017** was issued by a Principal Magistrate, whose pecuniary jurisdiction is limited to Kshs.10,000,000 under Section 7 (1)(c) of the Magistrates Court Act.

44. Two varying valuations of one of the deceased's property, LR No.13330/409 were produced by the Applicant and the Respondents. The Applicant's valuers valued it at Kshs.66,000,000 whereas the Respondents' valuers valued it at Kshs.13,000,000. This is but only one of the properties of the estate. The affidavit dated 22nd May, 2017 in support of the Petition for letters of administration lists fifteen (15) assets. Most

interestingly, the certificate of confirmation of grant dated 19th October, 2017 has fifteen assets in line with the petition, yet there is another certificate of confirmation of grant dated 2018 with twenty-three (23) assets including motor vehicles and some additional bank accounts and shares not earlier mentioned.

45. This Court has cautioned itself on the applicability of expert opinion, being the reports of the valuers. The court agrees with the decision in **CHRISTOPHER NDARU KAGINA V ESTHER MBANDI KAGINA & ANOTHER [2016] KEHC 3192 (KLR)** that the weight to be given to expert evidence will derive from how that evidence is assessed in the context of all other evidence and the circumstances of the case including the real likelihood of the expert witness having been compromised or the real possibility of such witnesses using their expertise to mislead the court by placing undue advantage to the party in whose favour they offer the evidence. The court has been vigilant to these realities and took caution in analyzing the evidence before reaching the conclusion that the deceased's assets were way above the pecuniary jurisdiction of the Principle Magistrate in the lower court.

46. The lower court therefore evidently lacked the pecuniary jurisdiction to hear and determine the petition in **Githunguri Succession Cause No.64 of 2017**. The confirmed grant, the attendant certificate of confirmation of the grant and associated orders are all void and a nullity in law for want of jurisdiction.

Whether the threshold for revocation of a grant has been fulfilled by the Applicants

47. Had the lower court had the pecuniary jurisdiction to hear and determine the succession cause, the pertinent question would have been whether this Court has the jurisdiction to revoke the grant issued to the Respondents. The circumstances in which a grant may be revoked or annulled are set out in section 76 of the Law of Succession Act as follows:-

“76: Revocation or annulment of grant.

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 the 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 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 any such inventory or account which is false in any material particular; or,***

e) that the grant has become useless and inoperative through subsequent circumstances.”

48. This application would have succeeded under the ground that the grant was obtained by means of allegation of a fact essential in point of law to justify the grant notwithstanding the allegation was made in ignorance or inadvertently. In the affidavit dated 22nd May, 2017 in support of the petition for letters of administration intestate, the Respondents stated that the estimated value of the deceased's estate was Kshs.100,000. This was an extreme undervalue that possibly misled the lower court on assessing its pecuniary jurisdiction, a pivotal point of law in succession matters.
49. The 1st Respondent states in paragraph 15 of his replying affidavit dated 8th March, 2022 that most of the properties that belonged to the deceased estate were originally in the name of his late father, **Mwangi Gicho**, who passed on in 1980. This is an admission that the 1st Respondent had deliberately omitted some assets in the petition for this unsubstantiated reason.
50. The Respondents did not include any known liabilities in the petition, yet in paragraph 22 of the 1st Respondent's replying affidavit dated 22nd May, 2017 he averred that he was servicing the estate's loan of Kshs.21,000,000 from the proceeds of the rental income of the estate. The 2nd Respondents admits in paragraph 8 of her replying affidavit dated 8th March, 2022 that the grant was issued before the lapse of 30 days after the publication of the Kenya Gazette but justifies it as a mere oversight. The days are necessary to enable any challenge to

be lodged against the petition. The pleadings indicate that the whole process of acquisition of the grant was hurried.

DETERMINATION

51. The upshot of the above is that this Court is satisfied that the application has merit and it is hereby allowed. In the interest of justice this Court makes the following findings and determinations: -

- (i) This Court finds the application to be partially with merit subject to Order 51(v) hereof.
- (ii) An order of injunction is hereby issued for the preservation of the entire estate and to restrain the Respondents, their agents, servants, employees or any other person claiming under them or their instructions from in any way administering the estate including collecting, receiving any rents, distributing, selling, managing, operating, making any alterations, transfers, charges, mortgages or any other dispositions or in any other manner dealing with any and all of the assets of the estate.
- (iii) The Respondents are hereby directed to open an estate bank account for purposes of depositing, collecting and getting any and all of the moneys or proceeds accruing from the assets of the estate and making payments in respect of any liabilities accruing from the estate from the date hereof.
- (iv) An order is hereby issued directing and compelling the Respondents to within ninety (90) days hereof to disclose, render and furnish the Court under oath with a true,

proper and accurate inventory of all the assets and liabilities of the deceased and to render a full and accurate account for all their dealings with the deceased's estate from the date of their appointment as administrators to date, hereof.

- (v) In default, the Grant of Letters of Administration issued to **David Mburu Mwangi and Jane Ngina Mwangi** on **19th October, 2107** by **Hon. C. Kutwa, PM (Githunguri)** will stand as revoked and new Administrators shall be appointed as shall be mutually agreed by the parties herein before the next mention date.
- (vi) Mention on 25th February, 2026 for compliance.
- (vii) Each party shall bear their own costs as the case is a family matter.

Orders Accordingly.

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 31st DAY OF OCTOBER, 2025.

**A. MSHILA
JUDGE**

In the presence of;

Sanja – Court Assistant

Manda for the Applicant

Ndungu for the beneficiary

Gachuhi for the 1st Administrator

Gachuhi h/b for Gatere for the 2nd Administrator