

**REPUBLIC OF KENYA**

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

**SUC. NO. 351 OF 2008**

**IN THE MATTER OF THE ESTATE OF M'MBWIRIA  
M'MUTHAURA - DECEASED.**

**HARRIET MWARI M'MBWIRIA.....PETITIONER**

**VERSUS**

**JOSEPH KITHINJI M'MBWIRIA .....1<sup>ST</sup> OBJECTOR**

**ISAAC KIRIMI MBWIRIA.....2<sup>ND</sup> OBJECTOR**

**DANIEL GITONGA M'MBWIRIA.....3<sup>RD</sup> OBJECTOR**

**RULING**

**Background**

1. The deceased died on 22<sup>nd</sup> January, 2008.
2. On 18<sup>th</sup> August, 2008, the Petitioner herein filed a Petition for letters of administration intestate. She listed the following property as having belonged to the deceased:-

***a. Parcel No. Kiirua/Ruiri/1197***

***b. Parcel No. Ntima/Ntakira/3771***

***c. Parcel No. Kiirua/Ruiri/930***

***d. Parcel No. Ruiri/Rwarera Adj. Section /640***

3. As per the petition's supporting affidavit, the deceased left the following persons surviving him:-

- **Harriet Mwari M'Mbwiria - Wife**
- **Mary Naitore - Daughter**
- **Jane Kithinji - Son**
- **Daniel Gitonga - Son**
- **Jennifer Gakii - Daughter**
- **Susan Gaceri - Daughter**
- **Stella Kathambi - Daughter**
- **Isaac Kirimi - Son**
- **Florence Makena - Daughter**

4. On 7<sup>th</sup> April, 2009, the court issued a grant to the Petitioner.

The court record shows that on 17<sup>th</sup> December, 2009, the Petitioner applied for the Confirmation of Grant. The said record also shows that the parties appeared before Lady Justice M. Kasango on 26<sup>th</sup> April, 2020 and the grant was confirmed. The property was distributed as follows:-

- a) *Milka Wanja Kariuki - Parcel No. Kiirua/Ruiri/1197*
- b) *Milka Wanja Kariuki - Parcel No. Kiirua/Ruiri/930*
- c) *Harriet Mwari M'Mbwiria - parcel No. Ntima/Ntakira3771*
- d) *Harriet Mwari M'mbwiria -Parcel No. Ruiri/Rwarera/640*

### **The application**

5. Vide an application dated 5<sup>th</sup> January, 2022, Joseph Kithinji M'mbwiria, Isaac Kirimi Mbwiria and Daniel Gitonga M'mbwiria., moved the court with summons to annul the grant herein and sought the following orders:-

***a) That the honourable court do issue temporary orders of inhabitation of LR. Nos.***

***Ntima/Ntakira/3771 and Ruirir/Rwarera/640 pending hearing and determination of this application.***

***b) That the honourable court be pleased to revoke and/or annul the letters of administration of Harrriet Mwari Mbwiria herein confirmed on 26<sup>th</sup> April, 2010 on the following grounds:-***

- i. That the proceedings to obtain the grant were defective in substances.***
- ii. That the grant was obtained fraudulently by the making of a false statement or by concealment from the court of something material to the case.***

- iii. That the grant was obtained by means of an untrue allegation of facts in points of law to justify the grant notwithstanding that the allegation was made in ignorance or in fraudulently.***
- iv. That the person to whom the grant was made has failed to distribute the estate of the deceased to the beneficiaries and without reasonable cause to proceed diligently with the administration of the estate and to produce to the court within the time prescribed any such inventory or account of an administration as is required in the law of Succession.***
- v. The costs of this application be charged to the estate.***

6. The application was supported by the grounds set out on its face and the affidavit of Isaac Kirimi, sworn on even date. It is the applicants' case that they are sons of the deceased,

hence beneficiaries to his estate. That the Petitioner had disinherited them against the will of their deceased father. That the Petitioner has concealed material facts, thus rendering the proceedings herein defective and fraudulent.

7. It is further deponed that the Petitioner had failed to administer the estate as is required by law.
8. The applicants thus sought that the grant be annulled and that the 3 of them be appointed administrators solely, or jointly with the Petitioner.
9. In her replying affidavit sworn on 6<sup>th</sup> May, 2022, the Petitioner deponed that the grant herein was confirmed in the presence of the applicants, who are her sons.
10. That before the deceased passed away he had appointed (sic) the applicants their shares to the estate and they were in the process of getting their titles. Therefore, the applicants cannot benefit twice. That the remaining land was meant for her and her daughters. That there was no fraud or concealment of material facts as alleged.

11. The respondent further deponed that the applicants are being greedy and want to leave her and her daughters destitute.
  
12. In his supplementary affidavit sworn on 17<sup>th</sup> November, 2022 Isack Kirimi deponed that even though the applicants were in court during the confirmation of the grant, the family had agreed that the Petitioner sells the land parcels No. Kiirua/Ruiriri/1197 and Kiirua/Ruiriri/930 and gives the proceeds to the daughters. That further Ntima/Ntakira/3771 was to be transferred to the applicants. That despite selling the two parcels of land, the Petitioner failed to transfer the other land and instead transferred it to their sisters. That the Petitioner has also failed to honour the wishes of their father that each child gets a share of the Ruiriri/ Rwarera/640.
  
13. The applicants confirmed that prior to his demise, the deceased had bequeathed land to them.

14. At the hearing, the applicants' witness, Isaac Kirimi, adopted his affidavits as his evidence. He insisted that his mother did not do what they agreed, that is to sell Parcel No. Ruiru/Buuri/1170 and Kiirua/Ruiru/930 and give them part of the proceeds. That they were to get a share of parcel No. 3771. He conceded that their father gave the sons land and gifts during his lifetime. That his sisters were to get 2 acres each in Ruiru/640.
15. In her evidence, the petitioner, also adopted her affidavit. She confirmed that during his lifetime, the deceased had sold 2 acres of land and that it is her sons who brought Milka Wanja to her and she bought 2 parcels of land. That the applicants withdrew the money that she received.
16. The parties filed submissions which I have dealt considered. The summons for annulment of the grant are premised on the provisions of Section 76 of the Law of Succession Act. Which 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 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.”**

17. As noted from the record, the grant was confirmed after all the beneficiaries signified their concurrence with the proposed mode of distribution. The applicants don't deny that they were in court at the time of the confirmation of grant herein.
18. That being the case, I am at a loss to understand how the Petitioner concealed material facts from them. It is clear that the confirmed grant did not have a provision for the sale of land distributed to the Petitioner.

19. There is really no evidence to support the applicants' argument that there was any other agreement on the mode of proposal other than the one ordered by the court with the consent of all the parties including the applicants herein.
20. That being the case, then the grant must be read as it is without adding foreign clauses to it.
21. The applicants also concede that they got gifts from the deceased during his lifetime as follows:-
  - **Joseph 1<sup>st</sup> applicant - Parcel No. 3770**
  - **Isaac 2<sup>nd</sup> applicant - Parcel No. 3772**
  - **Daniel 3<sup>rd</sup> applicant - Parcel No, 3789**
22. They concede that Parcel No. 3771 went to their mother, who from the copy of the green card marked item 4b, transferred the same to her daughters.
23. Looking at the matter, the law is that once a beneficiary is shown to have received a gift *inter vivos* that gift is to be considered when distributing the estate.

24. The record shows that each applicant got land equal in size to parcel number 3771. The said parcel of land is now shared by their sisters.
25. In my view, the applicants cannot seek to benefit twice before their sisters get anything. They are being greedy. As a matter of fact, it is the applicants' sisters who ought to complain about getting a lesser share, but they are content with what they got.
26. The respondent and the applicants were in court and they all consented to the distribution of 2 parcels of land to Milka Wanja, the purchaser. They have not laid any ground to set aside the consent.
27. From the applicants' own evidence, Parcel number Ruiriri/Rwarera/ 640 has a pending case. It is thus not free for distribution. As such, I will not make any orders on it.

28. I am thus not satisfied that there are grounds to annul the grant and the application is dismissed.

29. Each party to bear its own costs.

**Dated, signed and delivered at Meru this 6<sup>th</sup> day of November, 2025.**

**H. M. NYAGA,  
JUDGE.**