



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO. 2481 OF 2003**

**IN THE MATTER OF THE ESTATE OF ERASTUS GATARI MACHARIA**

**(DECEASED)**

**RULING**

The Applicant who is the only son of the deceased person in this matter filed the summons for revocation of Grant of Letters of Administration issued to his mother PRISCAH WAMBUI GATARI on 17th January 2003.

The Application is premised on the following grounds:

- 1) That the grant was obtained fraudulently by concealment of material facts to court and
- 2) Secondly the grant was obtained by means of an untrue allegation of fact essential but in law to justify the grant.

The application is supported by the Applicant's affidavit sworn on 4th September, 2003 the gist of which can be summarized as follows:

That the administrator obtained the grant by misleading the court with regard to the beneficiaries of the estate of the deceased.

That the Administrator included strangers in the petition ostensibly as Beneficiaries and that the Administrator has started appropriating some of the properties in the estate even before the grant has been confirmed to the following people:

- i) Eunice Wanjiku Njoroge
- ii) Jane Ruguru Irungu
- iii) Rose Muthoni Gachara

The Applicant therefore sought for the revocation of the grant but during the hearing his counsel stated that the grant should be issued jointly to the Applicant and the Petitioner.

The Petitioner did not attend court although served with the hearing notice. I have gone through her Replying affidavit sworn on 20th September 2003 which in my view raises serious issues of law as follows:

Firstly the Administrator is the widow of the deceased and therefore entitled by order of priority to be issued with the Letters of Administration.

Secondly the Applicant should have waited for the confirmation of the grant so that he could then file a protest in Succession Case No.2 of 2002 Kigumo Resident Magistrate's Court.

I have carefully considered this matter and the proceedings before the Resident Magistrate in Kigumo. It is clear that the Applicant attempted to object the grant and filed a Cross Petition for the grant.

The court after hearing both sides dismissed the objection and granted the Letters of Administration. The allegation that the consent of the Applicant was not sought cannot be true, he filed an objection in which case he could not have filed a consent to the grant. The applicant has not provided any evidence to support the allegation that the Administrator is alienating the deceased properties. In any case the grant has not been confirmed and even if the allegation that the Petitioner has included strangers in the petition were true, that can be dwelt with at the stage of confirmation. In other words until there is an application for confirmation with a proposed Schedule of distribution the allegation of including strangers and leaving out some assets are premature.

The last issue to consider is whether there is a continuing trust necessitating the appointment of an additional Administrator. The ages of the Beneficiaries is not indicated but going by the averment contained in the affidavits to the effect that the Administrator is an elderly woman, it is not possible for me to know whether the beneficiaries are of tender age. It was the duty of the Applicant to disclose whether there are minor children who are Beneficiaries, who require a continuing trust to be held by two Trustees. In the absence of this evidence I am not satisfied that the grant issued by the Resident Magistrate Kigumo Court in Succession Cause No.2 of 2002 should be interfered with. There is no material before me to support an application for revocation under Section 76 of the Law of Succession.

I however direct the Administrator to file an application for confirmation and a Schedule of distribution as soon as possible and not later than two months from the date hereof. Needless to say the Applicant will have an opportunity to protest if the concerns he has raised in this matter are repeated in the Application for confirmation.

In this regard the application dated 4th September 2004 is hereby dismissed with costs. It is so ordered.

Ruling read and signed on 29th October, 2004.

**MARTHA KOOME**

**JUDGE**