



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Kaniaru Gichui (Deceased) (Succession Cause
48 of 2018) [2022] KEHC 10627 (KLR) (26 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 10627 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE 48 OF 2018**

MM KASANGO, J

MAY 26, 2022

IN THE MATTER OF THE ESTATE OF KANIARU GICHUI (DECEASED)

RULING

1. The application before me dated 17th September, 2014 was filed by Martha Muthoni Gichuhi (now deceased). On her passing away, she was substituted by her son Samuel Kimani Gichuhi. The application is for revocation of the grant and the confirmed grant issued in Chief Magistrate's Court Thika Succession Cause No. 290 of 2001.
2. Parties elected to rely on affidavits witness statements and written submissions. I have considered them.

Analysis

3. I will not go into the core upon which revocation of the grant is sought because there is an error in that the application is filed before the High Court and it seeks to revoke the grant issued before the Thika Chief Magistrate's court being Succession Cause No. 290 of 2001. The application will fail for the reason that revocation of grant cannot be sought in a separate file to the file where the grant was issued. It is more even troubling because the respondent's affidavit sworn by Jeremiah Njoroge Gichuhi states that a similar application was made by Martha Muthoni Gichuhi deceased before the Thika Chief Magistrates Court in Succession Cause No. 290 of 2001 which application was dismissed. The deponent further stated that no appeal was filed against that dismissal.
4. It follows that not only did the applicant err to file revocation application before the wrong but further erred to file another application when one such application was dismissed by Thika Chief Magistrate's court. That dismissal renders the present application before me res judicata.

Disposition

5. It is in view of the above finding that the summons dated 17th September, 2014 is dismissed. There shall be no orders as to costs to that application because it is a matter involving very close family members.
6. This file shall henceforth be closed.



RULING DATED AND DELIVERED AT KIAMBU THIS 26TH DAY OF MAY, 2022.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Mourice

For Samuel Kimani Gichuhi (Applicant) : - Mr. Macharia

H/B Mr. Kariuki

For Jeremiah Njoroge Gichuhi (Respondent):- Ms. Wainaina

H/B Mr. Ngigi

RULING delivered virtually.

MARY KASANGO

JUDGE

