

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NO. 185 OF 2012

IN THE MATTER OF THE ESTATE OF THE LATE SAMUEL SUKDEV HANSRAIJ

GEORGE GITAU.....APPLICANT

VERSUS

SUSAN MUTHONI.....RESPONDENT

RULING

1. The applicants summons dated **21st December 2020** prays that the grant issued in favour of the applicant **on 31st May 2012** be revoked on the grounds that the same was issued fraudulently as there was concealment of material facts namely that he was a beneficiary of the parcel of land parcel number **519/6/XXIII NORO TOWNSHIP** by virtue of being a purchaser. In his supporting affidavit the applicant stated that he purchased the said land from one **Samuel Kimani Njoroge** on the **16th August 1991**.
2. That the said Samuel Kimani Njoroge had purchased the said parcel of land from the deceased herein. The respondent according to the applicant had also initiated an eviction suit at the Land and Environment Court which suit was still ongoing.
3. His beef with the respondent was that she had failed to notify the court that he was the true beneficiary to the estate and thus the grant ought to be revoked.
4. On her part the respondent vide the replying affidavit sworn on **19th January 2021** has opposed the application on the grounds that the George Gitau has never been a beneficiary to the deceased estate and she attached the letter from the local area chief who has clearly indicated the deceased beneficiaries. She went on to state that there was no evidence that he purchased land parcel number **519/6/XXIII NJORO TOWNSHIP** from the said Samuel Kimani Njoroge or at all.
5. She deponed that the suit at the land and environment court was true since the applicant had refused to vacate the suit parcel of land. She said that there was no such concealment of any facts and the application ought to be dismissed.
6. The court directed the parties to file written submissions which they failed to do as at the time of preparing this ruling. Nonetheless the issues herein are clear and straight forward. It is evident that the applicants claim is that of a purchaser of the said parcel of land. He claimed to have purchased it from one Samuel Kimani Njoroge who is now deceased.
7. There is no evidence of such purchase be it an agreement or any other documentary evidence. Secondly the said Samuel Kimani Njoroge was not the owner of the land but it was the deceased herein. Putting the above facts correctly, the recourse for the applicant is to seek remedy from the estate of the late Samuel Kimani Njoroge who may have sold him the land. There is no evidence that the late **Samuel Sukdev Hansraij** sold him the land.
8. More fundamentally, this court is not clothed with jurisdiction to determine the ownership in the manner the applicant is proposing. Whether he purchased it or not and from whoever is the preserve of the land court which the parties are now litigating under.
9. In the premises, the applicant in my humble view is not merited. The same is dismissed with costs to the respondent.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 23RD DAY OF SEPTEMBER 2021.

H. K. CHEMITEI

JUDGE