



**REPUBLIC OF KENYA**

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

**MISC. APPLICATION NO. 37 OF 2013**

**IN THE MATTER OF THE ESTATE OF JOSPHAT KABIBI ALIAS JOSPETER KABIBII  
(DECEASED)**

**VENESIA GITIRI MBOGO.....APPLICANT**

**VERSUS**

**GEDION MUGO PETER.....PETITIONER/RESPONDENT**

**JOHN GICHOVI GATUMU.....INTERESTED PARTY**

**R U L I N G**

1. This is a ruling for revocation of grant dated 20/03/2013 brought by one Venasia Gitiri Mbogo. It originally consisted of 5 main prayers 2, 3, 4, 5 and 6. Prayer 2 was dispensed with and prayers 3 and 4 dropped as indicated in the applicant's written submissions.

2. The two prayers are worded as follows:-

*5. That the proceedings to obtain the grant were defective in substance and the grant was obtained fraudulently by making of a false statement and by concealment from the court of some material facts to the case by the petitioner/respondent herein.*

*6. That the grant was obtained by means of an untrue allegation of fact essential on a point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.*

3. The applicant in the supporting affidavit and on the face of the application states that the deceased was her father in-law for she was married to his son one John Nyaga Kabibi now deceased. She further states that her late husband had petitioned for letters of administration intestate in the deceased's estate in PM Succession Cause No. 148 of 1996 which was taken over by herself as the petitioner.

4. It is further stated that her husband John Nyaga Kabibii had sold one acre to the Interested Party out of the deceased's land Ngandori/Ngovio/905 which measured two acres. The one acre was given to the applicant L.R. Ngandori/Nguvio/905 and she exchanged it with that of the interested party L.R. Ngandori/Kiriari/3197.

5. The respondent who is the son of the deceased later applied for revocation of the grant that had been confirmed on 29/04/2010. The application for revocation was not served on the applicant and it led to the revocation of the grant.

6. The application was opposed by the respondent on several grounds. Firstly, that the prayers Nos. 5

and 6 are defective in substance for they do not seek for order of the court. Secondly, that the applicant is a stranger to the estate and a mere impostor with no *locus standi*.

7. Thirdly, that the sole aim of the summons for revocation is to benefit one John Gichovi Gatumu the interested party who purportedly bought land from the late John Nyaga Kabibii. He was given the land in Kerugoya PMCC No. 148 of 1996. The grant was later revoked and the land Ngandori/Ngovio/905 reverted to the estate of the deceased.

8. This court has perused and considered the arguments of the parties in their submissions filed by their counsels. The firm of Fatuma Wanjiku & Co. represented the applicant's while the respondent's counsel was Victor Andande.

9. The applicant withdrew prayers 3 and 4 on 31/10/2016 leaving only prayers No. 5 and No. 6. Prayer No. 5 reads that *"the proceedings to obtain the grant were defective in substance and the grant was fraudulently obtained by making a false statement and by concealment from the court of some material facts..."*.

10. Prayer 6 reads that *"the grant was obtained by means of untrue allegation of fact essential on a point of law to justify the grant...."*

11. The two so called prayers do not seek any order from the court. The applicant has made statements of what she believes happened in obtaining the grant.

12. A prayer is intended to move the court to some action, to issue some positive or negative order against the opposite party. In this application specifically the purported prayers Nos. 5 and 6 that the applicant seeks to prosecute, there is no petition for an order from this court. Even if the court was to interrogate the merit of the facts and allegations laid before it, it would not grant any order since none has been sought. I agree with the respondent that the application is defective in substance and cannot see the light of the day.

13. I wish to briefly comment on the issues raised in this application. The respondent is a child of the deceased and is qualified to apply and be issued with the letters of administration. The applicant states that she is a widow of one of the son's of the deceased and has not attached any evidence to that effect. Her relationship with the deceased is crucial if the grant is to be revoked as she has intimated in her application.

14. Reading through the supporting affidavit, it is not in dispute that there was a grant issued and confirmed in PM Succession Cause No.18 of 1986 whereas the deceased's land was given to the interested party. This grant was annulled by Etyang, J. in Embu Misc. Application No. 45 of 1996.

15. The respondent was appointed the administrator of the estate and grant later confirmed. The applicant's claim is therefore based on the revoked grant. She did not appeal against the decision to revoke. The issue of whether or not she was served with the application seeking to revoke the grant ought to have been dealt with in the application for revocation. She is now challenging the process of issuing the grant to the respondent a little late in the day.

16. Having found this summons dated 20/03/2013 incompetent, I hereby strike it out with costs to the respondent.

17. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 31ST DAY OF OCTOBER, 2017.**

**F. MUCHEMI**

**JUDGE**

**In the presence of:-**

**Mr. Mugambi for Fatuma for Applicant**

**Respondent present in person**