



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**SUCCESSION CAUSE NO.529 OF 2006**

**IN THE MATTER OF THE ESTATE OF LATE NAFTALY MUREGE MUTHIGANI –  
(DECEASED)**

**JOHNSON A. MWANI MUREGE.....PETITIONER**

**- V E R S U S -**

**OBED MUOYA MUREGE.....RESPONDENT**

**R U L I N G**

Before me are two applications

1. Summons for revocation of grant dated 12/8/2016 filed by Obed Muoya Murege on 15/8/2016 in the summons supported by his affidavit sworn on 12/8/2016 he seeks the revocation of the grant with respect to the Estate of Naftaly Murege Muthigani who died on 26/4/1993, which was issued to Johnson A. Mwangi Murege on 24/5/2011, on the grounds that:

- a) The grant was obtained fraudulently by making a false statement or by concealment from the court of something material to the case.
- b) The person to whom the grant was made produced inventory that was false.

2. Notice of Motion filed on 6/4/2017 in which Obede Muoya Murege seeks that the Land Control Board Kandongu sub-county be restrained from dealing in any manner with LR. Kiine/Rukanga/1596 pending the hearing and determination of the summons for revocation of grant.

In my view, the disposition of the summons for revocation of the grant will take care of the latter application.

The applicant appeared in person. The petitioner respondent was represented by Andrew Kariuki (A.K.) & Co. Advocates.

Both applications are opposed. Parties agreed to rely on the affidavits on record and to file written submissions.

In the affidavit in support of the summons for revocation of grant, the protester depones that the petitioner failed to disclose that the deceased Naftaly Murege Muthigani was the registered proprietor of Parcel No. LOWER MUHITO/MUTUNDU/23 measuring 4.0 acres and that this parcel of land was registered in the name of one Kiige to hold in trust for himself and for the other sons of the deceased.

That this property was in 1987 transferred to one Samuel Maina Naftally Murege without the involvement of the other members of the family. Secondly that the motor vehicle registration No.KMA 227 had been transferred to him (Obede) by the deceased “many years ago”.

In support of these two positions he annexed, the green card for parcel No. LOWER MUHITO/MUTUNDU/23 showing that the land was registered in the name KIIGE s/o MUREGE on 7/9/59.

A second entry shows change of name to Samuel Maina Naftally Murege was registered on 9/1/1987 and land certificate issued.

On 8/12/1988 this parcel of land was subdivided into 2 parcels – 915 and 916 and the green card closed. The 2<sup>nd</sup> annexure is copy of records from the Directorate of Registration and Licencing (NTSA) showing that as on 4/8/2016, motor vehicle Reg/No. KMA 227 was registered in the name of Obed Muoya Murege.

In his replying affidavit the petitioner Johnson A. Mwangi Murege, depones that the property mentioned by the applicant does not belong to the deceased and the copy of records is not accompanied by the requisite transfer documents.

A perusal of the record reveals that on 27/7/2016, Justice Mativo delivered a judgment in which he specifically addressed the issues raised by the applicant in the summons for revocation of the grant issued to the petitioner.

At page 3 of the Judgment he states,

“The evidence of D.W.5 was clear that the deceased never owned any land at Mukurwe-ini and produced a title deed Lower Muhito/Mutundu/105 registered in the name of one Samuel Maina Naftaly Murege. The said title is a first registration and no evidence was tendered to show that it was ever registered in the name of the deceased”.

Similarly, this applies to the parcel referred to Lower Muhito/Mutundu/23. There is no evidence that it was ever registered in the name of the deceased. The first registration appearing there is the name of Kiige son of Murege. At the time of the application, it was already subdivided into two portions no. 915 and no. 916 in 1988. The applicant has not annexed any evidence to support the claim that the land was registered in the name of Kiige in trust for the other sons of the deceased.

With regard to the motor vehicle KMA 404 the court (Mativo J) at page 5 of the judgment stated,

(e) KMA 404 pickup and the bicycle be sold and the proceeds shared equally among the above persons in trust of their respective houses”.

I cannot annul/set aside Justice Mativo’s judgment on those two issues. And it is my humble view that the applicant’s place for remedy does not lie with this court.

Now coming to the 2<sup>nd</sup> application, the applicant has demonstrated through the annexure OMM 2 the green card for KIINE/RUKANGA/1596 that the petitioner had the whole parcel transferred to his name contrary to the orders issued by Justice Mativo on 27/7/2016, that the parcel be shared out into 5 (five equal portions). What the petitioner/respondent states in his replying affidavit of 18/4/2017 at paragraph 6 is not borne out by OMM2 which he also refers to.

It clearly shows that the whole parcel has been registered into his name on 25/10/16, and on 5/1/17 the entry shows that the parcel has been transferred to one Kennedy Kimaru Waringa (purchaser).

Clearly on the face of it there is mischief there. The administrator must demonstrate that he is complying with the terms of the certificate of confirmation of grant issued following Justice Mativo’s judgment of

27/7/2016.

Having considered the 2 applications, the affidavits both in support and in opposition, and the submissions by each party –

I find that:

- 1) There is no evidence placed before this court that parcel Land Lower Muhito/Mutundu/23 ever belonged to the deceased
- 2) There is no evidence placed before the court that the deceased transferred motor vehicle reg. No. KMA 404 to the applicant during his life.

I find therefore that the summons for revocation of grant dated 12/8/2016 must fail.

With regard to the Notice of Motion of 6/4/2017 – the applicant has demonstrated mischief on the part of the administrator. I order that;

- 1) The administrator to comply with the terms of the certificate of confirmation of grant issued on 27/7/2017
- 2) The Land Registrar Kerugoya to ensure, in the absence of other orders to the contrary, that any transactions with regard to LR. KIINE/RUKANGA/1596 comply with the certificate of confirmation of grant dated 27/7/2016.
- 3) Deputy Registrar to ensure that Order no. 2 above is served on the Land Registrar Kerugoya together with confirmed grant for purposes of compliance.

Each party to bear its own costs.

Dated, delivered and signed at Nyeri this 18<sup>th</sup> October 2017 in open court.

Right of Appeal 30 days

**Teresia Matheka**

**Judge**

In the presence of:

Court Assistant Harriet

Obed Muoya

Grace Wangari Murege