



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**SUCCESSION CAUSE NO. 423 OF 2002**

***In the matter of the Estate of NYAGA KIRUMA (Deceased)***

**SIMON MBOGO GAKENGE.....APPLICANT**

**VERSUS**

**GAKONO GAKENGE .....RESPONDENT**

**RULING**

The applicant Simon Mbogo Gakenge in his application dated 26th June, 2013 seeks for the following orders:-

1. *That this honourable court do authorize its Deputy Registrar to execute all the relevant legal documents to enable the applicant be registered as the absolute owner of 1½ acres as per the certificate of confirmation of grant of 23rd day of August, 1999 in Embu Succession Cause No. 202 of 1996.*

In his supporting affidavit, the applicant depones that vide SPM Succession Cause No. 201 of 1996 the grant in the deceased's estate was confirmed awarding him 1½ acres out of the estate. The petitioner died before the requisite documents for distribution of the estate were executed. It is for this reason that the applicant seeks to have the Deputy Registrar of this Court execute the documents in place of the deceased administrator.

The respondent Gakono Gakenge in his replying affidavit sworn on the 10th September 2014 opposed the application. He admits that the grant in this case was confirmed on 23/8/1999 whereas the applicant and other beneficiaries were given shares out of the estate. However, the applicant was given a share on LR. No. NGANDORI/KIRIGI/10 while he owns another parcel of land elsewhere. The respondent was opposed to the decision giving the applicant a share in LR. No. NGANDORI/KIRIGI/10. He instructed his advocate E.M. Mutahi & Co. to apply for revocation of grant who has not taken any steps to file the summons.

Mr. Ithiga for the applicant submits that when the respondent's mother died, the respondent replaced her as the administrator but has refused to execute documents to facilitate distribution of the estate. His application to revoke the grant was dismissed on 16/5/2013.

The respondent admits that he has no application pending in this file which is likely to affect the grant if it is dealt with. The fact that he instructed his advocate many years ago who never filed the application, does not justify holding the distribution of the estate in abeyance. If his advocate failed to act, he ought to have appointed another one or act in person. An application for revocation by one Danson Kariuki a beneficiary was dismissed on 16/5/2013 but he did not appeal against the decision. The reasons advanced

in that application are that the applicant was given a bigger share. This is the same argument the respondent herein has.

The respondent has never filed any summons for revocation of grant and he has no good reason for not executing the document in favour of the beneficiaries. The distribution was done in 1999 which about 15 years ago. The respondent cannot be serious that he intends to act in applying for revocation of grant if he has not done it for the last 15 years.

I find no merit in the replying affidavit. The estate of the deceased requires to be distributed to benefit the beneficiaries who were given shares.

The application is therefore allowed and orders sought granted. There will be no order as to costs.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 10TH DAY OF DECEMBER, 2014.**

**F. MUCHEMI**

**J U D G E**

**In the presence of:-**

**Mr. Njeru for Applicant**

**Respondent present**

**F. MUCHEMI**

**J U D G E**