



**REPUBLIC OF KENYA**

**High Court at Embu**

**Miscellaneous Application 147 of 2009**

ESTHAH MWANGANGI.....APPLICANT

VERSUS

PETER NGOROI MWANGANGI.....RESPONDENT

**RULING**

This is the application dated 17/12/2009 for revocation/annulment of grant under Rule 44 of the Probate and Administration Rules and Section 76 of the Law of Succession Act. The grounds as stated in the body of the application are:-

1. ***The grant to the Respondent made on 9/1/2009 and confirmed on 19/11/2009 be annulled or revoked on grounds that the same was obtained by concealment from the Court of something material to the case and further that the proceedings to obtain the grant and have it confirmed were defective in substance.***

In her affidavit in support the applicant stated that as a beneficiary to the estate of the deceased she was not aware of the succession cause giving rise to the grant. And that the Respondent had presented himself to the Court as the only beneficiary. The Respondent in his Replying Affidavit disputed the Applicant's averments. He indicated that the latter participated in the succession proceedings and had no objection to the confirmation of grant.

When the matter came for hearing on 18/3/2013 the applicant testified and called one of her sisters as a witness. Both of them testified that they had not gotten any share out of their mother's estate of 5 acres. They said their elder brother had been given 4 acres of land long before their parents died. And that both the applicant and her sister are unmarried. Her other witness was a clan member. He echoed the same sentiments. They are claiming 2 acres out of this land.

The Respondent on the other hand testified saying he relied on the replying affidavit he filed. He still insists that the land is his. I have had an opportunity of perusing the record of Runyenjes Court vide Succession Cause No. 98/2008. Its indicated that the estate of the late BERAS CIOMWARI MWANGANGI comprises of Land LR. KYENI/KIGUMO/2252 measuring 1.96 hectares the equivalent of 4.9 acres.

It goes without saying that this land could not be valued at Shs.100,000/= in November 2008. The learned trial Magistrate ought to have noted that and declined to hear the Succession Cause. Section 48(1) of the Law of Succession Act (cap 160 Laws of Kenya) puts a limit of Shs.100,000/= as the gross value of an

estate a Magistrate would deal with under the said Act. It shows clearly that the value of the estate was beyond the learned trial Magistrate's jurisdiction.

Besides this issue of jurisdiction, I also find that the deceased was survived by 4 children. When the succession cause was filed in Runyenjes, the Respondent never sought the consent of the other children. Hence the non filing of Form 38 by the other children. And on 19/11/2009 its indicated that ALL interested parties were present in Court and they raised no objection.

The record does not indicate who in particular was present. This is a critical point because the other beneficiaries have denied having been present in Court. There is nothing produced herein to prove that the beneficiaries were present in court on 19/11/2009. The record does not even have any proof of service for this hearing date because on 15/10/2009 the matter was adjourned as some of the interested parties were absent. It was important for the Court to be sure of service on these parties and their actual attendance.

And for the 2 reasons explained above, I do find that the Respondent did not involve his sisters in the process of the filing and determination of the succession cause at Runyenjes Court. Secondly but most important is that the learned trial Magistrate lacked the requisite jurisdiction to deal with the said matter.

I therefore set aside the orders issuing and confirming the grant to the Respondent. The Grant issued and confirmed is therefore revoked. The title to the said land KYENI/KIGUMO/2252 to revert to the original owner forthwith.

A fresh grant to be issued to **Esthah Mwangangi** and **Peter Ngoroi Mwangangi jointly**. The same to be confirmed as is required by law. The Land Registrar Embu to be served with this order for compliance.

Costs in cause.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 28<sup>TH</sup> DAY OF MARCH 2013.**

**H.I. ONG'UDI**  
**J U D G E**

**In the presence of:-**  
**Both parties**  
**Njue CC**