



**REPUBLIC OF KENYA**

**High Court at Embu**

**Succession Cause 362 of 2010**

**IN THE MATTER OF THE ESTATE OF HEZEKIAH WANJOHI WANGO (DECEASED)**

NYAGA MUCHIRI.....APPLICANT

VERSUS

MARGARET WANJIRU HEZEKIAH.....PETITIONER/RESPONDENT

**RULING**

This is the application for revocation of grant filed under Section 76 and 47 of the Law of Succession Act and Rule 44(1) Probate and Administration Rules for the following prayer:-

***“That the grant of representation issued to Margaret Wanjiru Hezekiah herein and confirmed on 5/7/2012 be revoked and/or annulled”.***

The main ground is that the grant of representation was obtained fraudulently and by concealing material facts from the Court. And the concealed material fact is that part of the properties and in particular land parcel No. GATURI/WERU/1034 included in the distribution of the estate of the deceased was part of parcel of land No. GATURI/WERU/705 which belongs to the applicant.

Secondly there was a decree issued on 7/7/2004 ordering that parcels of land No. GATURI/WERU/1034 & 1035 be cancelled and be restored to the original parcel No. GATURI/WERU/705 belonging to the applicant herein. The applicant has sworn an affidavit supporting the application. He has annexed copy of the title deed (“NM2”), copy of the decree (NM3) and copy of the Green Card (NM4).

The Respondent was served and she engaged the firm of Okwaro Advocate to appear for her. And on 17/12/2012 it was by consent of both parties agreed that the Respondent files and serves a replying affidavit within 14 days and the Applicant was granted leave to respond. As at 7/3/2013 when the matter came for mention there had been no replying affidavit filed nor served. The Court therefore decided to make a Ruling based on the material before the Court.

From the annexures NM2, 3 & 4 it is clear that parcel GATURI/WERU/1034 does not form part of the deceased's estate. The said No. GATURI/WERU/1034 was cancelled and restored to the original owner i.e. GATURI/WERU/705. From the application for confirmation, the administratrix informed the Court that the land No. GATURI/WERU/1034 comprised 13 acres and that is what she was distributing. Infact there is an error on the record because the Court over looked the fact that the said administratrix had not provided the Court with a title deed or proof of ownership of this property by the deceased.

Its further noted that there is no proof that the deceased herein owned Plot No. 7 at Riandu Market, which may again raise other disputes. It was the duty of the Deputy Registrar to ensure that all documents

related to the properties up for distribution are filed together with the documents for gazettelement. I have also noted that there is no letter from the administration filed herein in relation to the deceased's estate.

I do apologize to the applicant on behalf of the Court for these omissions. A copy of this Ruling to be served on all the Deputy Registrars in this Station.

The result of all this is that the grant confirmed herein on 5/7/2012 is annulled and shall be of no effect. The administrator is at liberty to apply for confirmation after satisfying herself of the properties that truly form the deceased's estate.

Costs to the applicant.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 16<sup>TH</sup> DAY OF APRIL 2013.**

**H.I. ONG'UDI**

**J U D G E**

**In the presence of:-**

**Ms. Nyaga for Kathungu for Applicant**

**Applicant  
Njue CC**