

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO: 3191 OF 2005

IN THE MATTER OF THE ESTATE OF JORAM MBURIA GITU (DECEASED)

RULING

The summons for revocation dated 14th November 2005 seeks revocation of the grant made on 23rd July 1999 to Veronica Kariuko Mburia. It is supported by the affidavit of the applicant, who claims to be a son of the deceased.

The grant sought to be revoked was made by the resident magistrate's court at Kerugoya. It is submitted that the said grant has been confirmed. The applicant complains that the respondent concealed from the court the fact that the deceased had another wife and children. The respondent upon being served did not file an affidavit in reply. Instead she filed grounds of opposition, dated 11th November 2010. She says that the application dated 14th November 2005 is *sub judice* as there are other suits pending in courts at Kerugoya, Nyeri and Embu on the same estate.

Both sides have filed detailed written submissions. The applicant argues that his application meets the threshold set in **Section 76** of the Law of Succession Act for revocation of grant as the grant made to the respondent was obtained on concealed information. The respondent argues that the applicant was not a dependant of the estate as he was not a child of the deceased. She further argues that that the applicant's mother was divorced by the deceased.

I note that the matters raised in the written submissions of the respondent are matters of fact that ideally ought to be raised in an affidavit. The respondent chose not to file an affidavit and she lost the opportunity to place these facts before the court. Raising these facts in written submissions is tantamount to giving evidence from the bar. Evidently, the allegations made by the applicant in his affidavit in support of the application have not been controverted.

In the grounds of opposition dated 11th November 2010 it is argued that the matter is *sub judice* as there are other suits elsewhere on the same issue. She cites Kerugoya SPMCCC No. 20 of 2001, Nyeri HC MISC. Appl. No. 128'A' of 2000, Embu HCSC No. 253 of 1998 and Kerugoya RMCSC No. 6 of 1999. Nyeri HC Misc. Application No. 128 'A' of 2000, Kerugoya RMCSC No. 6 of 1999, Embu HCSC No. 527 of 2002 and Embu HCSC No. 253 of 1998 have all been consolidated with the current cause, and the court files in respect of those other causes are attached to the court file in respect of the instant cause. Kerugoya SPMCC No. 70 of 2001 is not a probate matter and therefore it has no bearing to these proceedings. Since the suits the respondents is referring to have been consolidated with this cause, it is this court which is seized of the matter concerning the estate of Joram Mburia Gitu. The issue of *sub judice* therefore does not arise.

As no evidence has been presented by the respondent to counter the facts in the summons for revocation application dated 14th November 2005, to the extent that the affidavit in support has not been replied to, I find that there is merit in the application. The record in Kerugoya SRMCS No. 6 of 1999 is clear that the respondent did not disclose existence of other survivors of the deceased.

I will therefore allow the applicant dated 14th November 2005. The grant made on 23rd July 1999 to Veronica Kariuko Mburia in Kerugoya SRMSC No. 6 of 1999 and confirmed on 17th December 1999 is

hereby revoked. All the transactions conducted on the basis of the said grant are hereby cancelled and nullified. Costs of the application are granted to the applicant.

I note that the property comprising the estate is situated in Kirinyaga County. There is a High Court registry at Kerugoya. There is no good reason why this matter should be handled at Nairobi and I will therefore order that this matter be transferred to the High Court of Kenya sitting at Kerugoya for hearing and determination.

DATED, SIGNED and DELIVERED AT NAIROBI THIS 27th DAY OF June 2013.

W.M. Musyoka

JUDGE