

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 395 OF 2005

IN THE MATTER OF THE ESTATE OF MWAI HINGA

alias KIHIA HINGA - DECEASED

DANIEL MBUTHIA NJIRU APPLICANT

VERSUS

GRACE WACERA NDEREBA RESPONDENT

JUDGMENT

This judgment is the outcome of the summons for revocation of grant dated 24th January, 2011, in which Daniel Mbuthia Njiru, hereinafter referred to as the Applicant sought for the grant issued to Grace Wacera Ndereba on 23rd May, 2007 revoked. The summons is supported by the Applicant's affidavit and that jointly sworn by Paul Kigara Ndereba and Albert Muiru. Grace Wacera Ndereba filed a replying affidavit she swore to opposed the summons. With the concurrence of learned counsels appearing in this court, it was directed that the summons be determined by affidavit evidence and written submissions.

I have considered the material placed before this court together with the submissions. On the face of the summons, the applicant listed the following grounds in support of the summons for revocation of grant.

- a. ***The grant was made fraudulently by making false statements and concealing material facts.***
- b. ***The grant was obtained by means of an untrue allegation of fact essential in point of law to justify the grant.***
- c. ***The proceedings to obtain the grant were defective in substance.***

The applicant deponed in his affidavit that he bought one(1) acre to be excised from **L.R.NO. Othaya/Kihugiru/415** from the share of one **Francis Waweru Ndereba**, a son and a beneficiary of the deceased. He claimed he was put into occupation and has had quiet possession. The aforesaid vendor is said to have passed away in the month of November, 2010. On 29th November, 2010, the applicant avers that he received a demand notice requiring him to vacate the land in dispute. The notice prompted the applicant to conduct a search which revealed that title had passed to Grace Wacera Ndereba, the Respondent by way of transmission having succeeded the estate of the late Mwai Hinga alias Kihia Hinga. The applicant claimed that he bought the land on the understanding that he would be included as one of the beneficiaries of the estate of Mwai Hinga alias Kihia Hinga, deceased. He alleged he was never notified nor involved in the Succession proceedings. The applicant averred that since his occupation was notorious he expected the Respondent to inform him of the existence of the succession cause. The Applicant received support from the brothers of the late Francis Waweru Ndereba (*i.e. Paul Kigara Ndereba and Albert Muiru*). The duo averred that they are aware their late father sold one (1) acre to the Applicant. They confirmed having witnessed the execution of the sale agreement. They also claimed that she was fully involved and she in fact sanctioned the transaction as the administrator of the estate. The duo further confirmed that the Applicant has taken up occupation of land in question which portion was due to the estate of Francis Waweru Ndereba, deceased. In her replying affidavit, the Respondent denied acting fraudulently in obtaining a grant of letters of administration. She averred that prior to the deceased's death the deceased had not sold his land and that she only came to learn of the existence of the

sale agreement when she was served with the summons for revocation of grant. The Respondent alluded that the late Francis Waweru Ndereba had no proprietary interest to sale hence the applicant has no valid claim in law. It is strange to note that the Respondent did not respond to the allegation that the applicant occupied the land and has had peaceful occupation.

The matter before me is the issue touching on the revocation of grant. It is not in dispute that the grant was confirmed on 23rd May, 2007 and that **L.R. No. Othaya/Kihugiru/415** was thereafter transmitted to the Respondent. It is alleged that the grant was obtained fraudulently. On this ground, I find that the applicant has failed to establish any allegation of fraud against the Respondent. With respect, I agree with the Respondent that she had no obligation to involve the applicant in the succession proceedings because by then the applicant had not executed any agreement with the late Francis Waweru Ndereba nor with the deceased's estate. The affidavit evidence show that the agreements were executed on 1st August, 2007 and on 12th May, 2008. It is obvious from the above scenario that the Respondent could not have foreseen the future transaction between the late Francis Waweru Ndereba and the Applicant. I find no fault on the part of the Respondent. It is also apparent that the applicant purchased a portion of land from a person who had no proprietary interest. It is averred that he sold his beneficial interest. That beneficial interest is yet to be determined. Unfortunately, the vendor has passed on and the applicant may at the end be forced to pursue the Estate of Francis Waweru Ndereba for the available remedies in law.

In sum, I find the summons for revocation of grant to be unfounded. The same is dismissed with costs to the Respondent.

Dated, signed and delivered this 23rd day of August, 2013.

J.K. SERGON

JUDGE

In the presence of Kiminda for Respondent

Kingori for Applicant