



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**SUCCESSION CAUSE NO. 746 OF 2009**

**IN THE MATTER OF THE ESTATE OF WANJOHI MUTUOTA – DECEASED**

ELIDY WAIRIMU MAINA ..... APPLICANT

VERSUS

CHARITY WAMUYU WANJOHI .....RESPONDENT

**JUDGMENT**

A temporary grant of letters of administration intestate in respect of the estate of **Wanjohi Mutuota**, deceased was made to **Charity Wamuyu Wanjohi**, hereinafter referred to as the Respondent, on 18th January, 2010 and confirmed on 17th September, 2010. **Elidy Wairimu Maina** hereinafter referred to as the Applicant has now taken up the summons for revocation of grant dated 7th January, 2011 in which she sought to have the grant given to Charity Wamuyu Wanjohi revoked. The summons is supported by two affidavits sworn and filed by the Applicant. The Respondent filed two affidavits she swore plus those of Samuel Muriithi Wanjohi and Samwel Mwangi Wotuku to oppose the summons. This court directed the summons to be determined by affidavit evidence and written submissions.

The Applicant has urged this court to revoke the grant issued to the Respondent on the basis that the same was fraudulently obtained by the making of a false statement. She claimed that the Respondent failed to disclose that the Applicant was entitled to wholly inherit **L.R. NO. KONYU/ICHUGA/1662** and that the Respondent was only entitled to inherit **L.R. NO. KONYU/ICHUGA/1722**. The Respondent on her part, opposed the summon alleging that the Applicant has no claim in the estate, hence she was under no obligation to include her as a beneficiary in the succession proceedings. She denied the allegations of fraud brought against her. She denied knowledge of a land transaction between the deceased and the Applicant. In response to the Respondent's assertion the Applicant alleged that the deceased herein held a portion of the land in trust for the Applicant's late mother Nyawira Nguru which was consolidated with the deceased's land in 1959. The Applicant further stated that on 8th December, 1992 the deceased and the Applicant's mother shared the survey fees to have the land in question subdivided so that he would transfer to the Applicant's mother, her portion. Pursuant to that agreement it is said that **L.R.NO. KONYU/ICHUGA/1230** was subdivided into **L.R.NOs. KONYU/ICHUGA/1660,1661 AND 1662**. The deceased is said to have sold **L.R.NO. KONYU/ICHUGA/1661** and was left with **KONYU/ICHUGA/1660** which was thereafter subdivided into **LR.NO. KONYU/ICHUGA/1722 AND 1723**. The Applicant further averred that the deceased sold **L.R. NO. KONYU/ICHUGA/1723** and retained **1722**. The deceased passed on before transferring **L.R.NO. KONYU/ICHUGA/1662**.

During her life time, the Applicant's mother together with the applicant are said to have been

utilizing **L.R. NO. KONYU/ICHUGA/1662**. The Applicant said she went to the Land Board to object when she heard that the Respondent was offering for sale the land. The applicant avers that the Applicant agreed before the Mathira Land Control Board to transfer the land in dispute to her on condition that she refunds to her Kshs. 20,000/= being half the expenses she spent in the succession proceedings. The Applicant secured the affidavits of the area chief and the Respondent's son to show that the Respondent was aware of the Applicant's claim before obtaining letters of administration.

I think the question which must be answered in this judgment is whether the Respondent acted in a manner that can justify this court to issue an order revoking the grant. The Respondent does not deny that the Applicant has been cultivating the land in dispute. The Respondent has not specifically denied the allegation that the applicant's late mother has been cultivating the portion the applicant now cultivates which is registered in the deceased's name having been consolidated with the deceased's land. The Respondent has not also denied the fact that she promised to transfer the land in dispute to the applicant when she was confronted by the applicant at the Mathira land Board.

I am unable to believe the Respondent's assertion that she was not aware of the Applicant's claim. The applicant's continued cultivation of the land in question should have alarmed the Respondent to make inquiries from other relatives and the relevant authorities.

In my view, the Respondent decided to conceal this vital information. She is therefore guilty of material non-disclosure. Consequently, I am justified to make the order to revoke the grant. In the end, I find the summons for revocation of grant dated 7th January, 2011 to be well founded. It is allowed as prayed.

**Dated, signed and delivered at Nyeri this 23rd day of August, 2013**

**J.K. SERGON**

**JUDGE**

In the presence of Kiminda for Respondent

N/A for Applicant