

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

MISCELLANEOUS APPLICATION NO. 173 OF 2001

FAITH WANJIKU NJOGUAPPLICANT

VERSUS

SEBASTIAN KORI NJOGU..... RESPONDENT

JUDGMENT

The subject matter of this judgment is the summons for revocation and or annulment of grant dated 24th October, 2001 taken out by **Faith Wanjiku Njogu**, the Applicant herein. **Sebastian Kori Njogu**, the Respondent herein filed a replying affidavit to resist the summons. This court directed the dispute to be determined by the reception of oral evidence. The Applicant testified and also summoned one witness to buttress her case. The Respondent on the other hand testified and summoned two independent witnesses to support his case. At the close of the evidence, learned counsels appearing in this cause were allowed to file written submissions.

I have considered the evidence presented together with the written submissions. In the application for revocation and or annulment of grant the Applicant avers that the grant should be revoked because the same was obtained through proceedings which were defective in substance and on the basis that the grant was obtained fraudulently by the making of a false statement and by concealment from court of something material . It is alleged by the Applicant who is the 2nd wife of the deceased that she entrusted the Respondent to pursue the Succession Cause on her behalf since she was illiterate. It is said the Respondent took advantage of the Applicant and wanted to inherit a large share of the deceased's Estate. The Applicant avers that the Respondent filed the Succession cause at **Kerugoya i.e Kerugoya SR.M.C.S.C. No. 240 of 1995** without her knowledge and included her name as a beneficiary without her notice. The grant was subsequently confirmed jointly in the names of the Applicant and the Respondent. It is the evidence of the Applicant that the Respondent merely took documents to her to sign without any explanation. She later came to learn that she was only allocated 2 ½ acres while the rest of the Estate went to the Respondent. It is the Applicant's submissions that she was the only person entitled to administer the Estate of her husband. The Respondent on the other hand stated that being a son to the deceased, he was entitled to take up letters of administration The Applicant has denied that the Respondent is a son of the deceased but was a person merely accommodated by the deceased to occupy a portion of the deceased's land. It is said the Respondent took advantage of his occupation and changed his name to show he was a son of the deceased. The Respondent denied being involved in the Succession Cause at Kerugoya. He alleged that the Applicant and one Kabata were the ones who pursued the aforesaid proceedings instead. The evidence tendered shows that the asset of the Estate i.e **L.R.No. Kabare/Nyangati/272** measures approximately 15 acres out of which the Respondent got 12 ½ acres while the Applicant got 2 ½ acres. It is also not in dispute that the Respondent sold 2 acres while the Applicant sold 1 ½ acres to third parties leaving a balance of 11 ½ acres.

After anxiously considering the evidence and the rival submissions, I have come to the following conclusions in this matter. The Applicant admitted that the signatures appended in documents filed before the subordinate court were hers and that she was aware of the filing of the Petition. If her signature had been forged she should have obviously reported to the police for investigation. I am convinced the applicant voluntarily signed and consented to the Respondent's name being included as a joint administrator of the Estate. I am not convinced that the Respondent is not a son of the deceased. The Applicant has failed to give a credible explanation as to how the Respondent changed his name to adopt that of the deceased. She has further failed to explain how the Respondent was allowed to reside on the deceased's land alongside his sons. I am further satisfied by the Respondent's explanation that the

deceased had two wives, his late mother and the Applicant. I also find the Respondent's evidence to be credible in that I am convinced the deceased divided his land inter vivos. In her evidence, the Applicant denied having sold part of her land but the Respondent convinced me that indeed she sold part of her land. This fact is admitted in the Applicant's advocates submission. I think the Applicant was not very candid in many respects.

In the end, I find no sufficient reasons to order for the grant to be revoked. It would appear the administration of the Estate is complete, the property is already in the hands of the beneficiaries. Some of the beneficiaries including the Applicant have passed their interest in those properties to third parties who also parted their proprietary interests to other parties. In sum, I see no merit in the summons for revocation of grant. The same is dismissed with each party meeting his or her own costs.
Dated, signed and delivered this 23rd day of August, 2013

J.K. SERGON

JUDGE

In open court in the presence of Ombongi holding brief for

W. Macharia for Respondents and

Abubaker for the Applicant