



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
SUCCESSION CAUSE NO. 425 OF 2003

In the matter of the estate of MUGWE MATHU MOHAMED -DECEASED

AND

MOSES MWANGI MATHUAPPLICANT

VERSUS

HELLEN WAIRIMU MATHURESPONDENT

JUDGMENT

The subject matter of this judgment is the summons for revocation of grant dated 14th March, 2011 taken out by one Moses Mwangi Mathu hereinafter referred to as the Applicant. Hellen Wairimu Mathu, hereinafter referred to as the Respondent filed a replying affidavit she swore to oppose the summons. When the summons came up for hearing Sijenje learned counsel appearing in this matter for the Applicant successfully applied to have the dispute disposed of by affidavit evidence and by written submissions.

I have considered the grounds set out on the face of the summons and the facts deponed in the affidavit filed for and against the summons plus the written submissions.

It is the submission of the Applicant that the grant given to the Respondent on 6th April, 2004 was obtained fraudulently by the making of a false statement and by the concealment from court, some material facts on the part of the Respondent. It is alleged that the deceased was survived by thirteen(13) persons and not ten(10) as claimed by the Respondent in the certificate of confirmation of grant. It is said that the Respondent deliberately omitted the names of three beneficiaries yet they were people well known to her. The Respondent on her part stated that she was not aware of the three people who were allegedly left out. She claimed that the deceased was only survived by 9 people. She denied knowledge of the deceased's polygamous marriage stating she was the only widow. The Respondent further alleged that though the land which is registered in the deceased's name was acquired jointly between the Applicant and the Respondent hence the same should be declared to have been held by the deceased in trust for himself and the Respondent. The Respondent also alleged that she save the property from the auctioneers jaws on two previous occasions. I think the critical question which seeks for an answer is whether or not the Respondent intentionally failed to disclose that the deceased was a polygamous man at the time of his death? The Respondent is emphatic that she never knew the Applicant and his brother. She however admits that she has had a case filed against her which is a subject of an appeal vide **Nyeri H.C.C.A. No. 37 of 2001**. There is no doubt that the Respondent listed the following as the only beneficiaries of the Estate of Mugwe Mathu Mohamed, deceased;

1. Mary Wangare Mathu
2. Musa Mwangi Mathu
3. Issa Kanyunyi Mathu
4. Ishmael Maina Mathu
5. Tabitha Wanjugu Mathu
6. Isaac Wachira Mathu
7. Joseph Mwenda Mathu
8. Adam Kahiga Mathu
9. Ruth Nyambura Mathu

It is the Applicant's submission that his name and that of Kahiga Mathu, Wanjugu Mathu and Jeremiah Maina Mathu should have been included as beneficiaries too. A critical examination of the competing arguments will show that both the Applicant and the Respondent knew each other before. In fact in paragraph 12 of her replying affidavit, the Respondent avers that the outcome of the Appeal arising from the suit between her and the Applicant will have a direct bearing to these proceedings. She proposed that the two i.e. this summons for revocation of grant and **Nyeri H.C.C.A. No. 37 of 2001** be heard together. Apparently the Respondent has also stated in paragraphs 8,9,10 and 11 of her replying affidavit that **L.R. No. 6376/4** was acquired through her joint financial contribution with the deceased. The Respondent averments were made without being prompted. The only inference I can draw is that the Respondent did not make a full disclosure of some facts material to this case. She has merely denied knowledge of the relationship between the Applicant and the deceased. She has not specifically denied the assertion that the Applicant and his siblings are children of the deceased. I am convinced that since there is a lot of doubts surrounding this case, a fair order is to have the grant revoked. This will give the parties a chance to have the contentious issues sorted out before the Estate can finally be distributed. I hereby allow the summons dated 11th March, 2011 as prayed save that each party should bear 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 Kilonzo for Applicant

N/A for Njenga Muchai for Respondent