



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**SUCCESSION CAUSE NO. 91 OF 2001**

**IN THE MATTER OF JEREMIAH GAKUU GACHEMI (DECEASED)**

BENJAMIN GACHARI GAKUU.....APPLICANT

**VERSUS**

GIDEON NJOGU.....RESPONDENT

**JUDGMENT**

**Benjamin Gachari Gakuu**, the applicant herein, took out the summons for revocation of grant dated 8th May 2012 in which he applied for the grant issued to **Gideon Njogu**, the Petitioner/Respondent herein, on 18th December, 2001 and confirmed on 01/08/2002 to be revoked. The main ground relied upon is that the Petitioner had excluded the Applicant from sharing the estate. The Petitioner on his part filed a replying affidavit he swore on 16th June 2012 opposing the summons. He averred that the applicant appears as one of the beneficiaries in P&5A. When the summons came up for hearing, learned counsels from both sides recorded a consent order to have the dispute determined by affidavit evidence and by written submissions.

I have considered the summons plus the facts deponed in the affidavits filed in support and against the summons. I have further taken into account the rival written submissions. The main ground put forward by the applicant is that he was not named in the schedule of distribution as amongst those to share the deceased's estate. The Petitioner was categorical that the applicant was named as a beneficiary hence his allegation is unfounded. The Petitioner stated that though the applicant was included as one of the beneficiaries he was not given a share of the estate because he had been adequately provided for during the deceased's lifetime and that fact was well known to the applicant. The Petitioner listed the parcels of land given to the applicant as **L.R.No.Laikipia/Daiga/Ethi Block1/94,L.R.No.Laikipia/**

**Daiga/Ethi Block 1/93** and **L.R.No.Magutu/Gatei/17**. The Petitioner refuted these claims stating that he bought the parcels of land situated in Laikipia using the deceased's name while he was working with the City Council of Nairobi. He further averred that his mother gave him L.R.No.Magutu/Gatei/17 during her lifetime hence the parcel did not form part of the deceased's estate. It is not in dispute that the applicant was listed as a beneficiary of the deceased estate though he was not given a share. This fact is admitted by the Petitioner with an explanation that the applicant had been adequately provided for by the deceased *intervivos*. The Applicant in his further affidavit stated that the Petitioner like him was also given by the deceased *intervivos* L.R.No.Nyandaura/LeshauBlock5/24. It is important to note that there was a previous attempt by the Applicant herein and one Joshua Kariuki Gakuu to have the same grant revoked on the basis that they were not consulted before applying for the grant. The applicant had even stated that there existed a will. That application was heard and dismissed on 17th September, 2010. This court found the applicants not candid. During that time, the applicant did not complain that he was left out in the sharing of the estate. In view of his past conduct, I am convinced the Petitioner has deponed the truth in his averments that the deceased adequately provided for the applicant. I believe the Petitioner's assertion that the parcels of land situated in Laikipia belonged to the deceased who in turn transferred to the applicant *intervivos*. There was no good reason why the applicant would register the aforesaid parcels in the deceased's name. The original parcel of land was L.R.no. Laikipia/Daiga/Ethiblock 1/22. The aforesaid parcel appears to have been subdivided giving rise to L.R.nos.Laikipia/Daiga/Ethi Block1/93,94 and 95. The first two parcels were transferred to the applicant and the third parcel remained with the deceased thus it is available for distribution.

In the end, I see no merit in the summons for revocation of grant the same is dismissed. Since the parties involved in this dispute are members of the same family I order that each one of them meets his own costs.

**Dated, Signed and delivered this 16th day of December 2013.**

**J.K.SERGON**

**JUDGE**

- In open Court in the presence of Githinji holding brief for Muchiri Gathoni for Applicant.
- N/A for Kamwenji for Respondent.