



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
SUCCESSION CAUSE NO.487 OF 2009
IN THE MATTER OF THE ESTATE OF
JOSEPH GITHAE KARINGITHI – DECEASED

CHARLES KAHOHIA KARINGITHI.....PETITIONER/RESPONDENT

versus

PAUL KARONJI KARINGITHI.....INTERESTED PARTY/APPLICANT

R U L I N G

This ruling is the outcome of the Summons for Revocation or Annulment of Grant dated 2nd February 2011, in which Paul Karonji Karingithi, the Interested Party/Applicant herein, seeks to be given the following orders.

- 1. That the grant of Letters of Administration granted to the Respondent herein Charles Kahohia Karingithi on 15th September, 2009 and confirmed on 17th September, 2010 be revoked and or annulled.***

- 2. Alternatively, and without prejudice to the Prayer No.1 above, the respondent do forthwith apply for a supplementary confirmation and or rectification of the Grant to indicate all the beneficiaries and their respective shares in the estate be ascertained accordingly.***

The summons is supported by the affidavit of the Applicant. Charles Kahohia Karingithi, the Petitioner/Respondent filed a replying affidavit to oppose the summons. This court directed the dispute to be determined by affidavit evidence and by written submissions.

I have taken into account the affidavit evidence plus the written submissions filed by both sides. It is the submission of the Interested Party that the grant was obtained fraudulently by the making of a false

statement or by the concealment from the Court of something material to the case. It is also alleged that the Petitioner and without consulting the other family members misrepresented to the Court that he was the sole person surviving the late Joseph Githae Karingithi yet he knew that was not true. It is further alleged and argued that the Applicant has not diligently proceeded with the administration of the estate in that he has arbitrarily appointed himself the sole beneficiary of the estate thus disinheriting the applicant and other family members. The Interested Party alleged that he only came to know there was something fishy about the deceased's estate when tenants occupying the deceased's unregistered plot in Embakasi came to make inquiries as to who should be paid rent. It is stated that the Petitioner had instructed those tenants to pay rent directly to him because he was the new owner of the plot. The Applicant was of the view that the estate should be distributed equally between the three brothers of the deceased. The Petitioner on his part urged this Court to dismiss the summons on the basis that the same is vexatious and frivolous. He pointed out that the family had discussed and agreed on how to share the deceased's estate. The Petitioner averred that the Applicant had agreed not to lay any claim over the deceased's estate nor to participate in the proceedings. It is alleged that the Applicant has benefited from the proceeds of rent from the deceased's house at *Sinai Village* and has even failed to account for the same. It is argued that the Applicant rushed to Court to make this application when he realized he was unable to account for the rent collected from that house. The Petitioner further alleged that the deceased had expressed his wish that properties including the pension, money at bank plus other benefits be inherited by him.

From the material submitted to this Court, it is apparent that, the late Joseph Githae Karingithi died intestate leaving no spouse nor children. He was survived by two brothers namely Charles Kahohia Karingithi and Paul Karonji Karingithi plus a sister.

The assets of the estate are identified as follows:

(i) L.R. No. Mutura/Thome Block 1/3826 (Mathira).

(ii) L.R. No. Mutura/Thome Block 1/4265 (Mathira).

(iii) Unregistered plot at Embakasi.

(iv) Cash at Bank (Kenya Commercial Bank).

(v) Pension.

It is not in dispute that the Petitioner named himself as the only person who survived the deceased. His justification is that the family had met and agreed to have him not participate in the Succession proceedings nor claim anything from the estate. That assertion is denied by the Applicant. He has now asked this Court to revoke and or annul the grant. After a careful consideration of the rival affidavit

evidence and submissions, I am convinced that the Petitioner did not make a full disclosure to Court of the beneficiaries who rank on priority. There is no credible evidence that the family met and agreed to have the Petitioner solely inherit the deceased's estate. I am convinced that the Petitioner had willfully failed to be candid to this Court on the issue relating to the beneficiaries of the estate. Right from the beginning, he intended to portray himself as the sole survivor and beneficiary of the estate yet he knew there were other beneficiaries who survived the deceased. The Petitioner is found guilty of making an untrue allegation of fact which is so material to this cause. I find the summons for revocation of grant to be well founded. The summons is allowed in terms of Prayer 1. Since the dispute involves members of the same family, I direct that each to meet his own costs.

Dated and delivered this 27th day of April 2012.

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J. K. SERGON

JUDGE

In open court in the presence of Mr. Waweru holding brief Ndegwa for Petitioner and Mr. Karanja holding brief Mahinda for the Applicant.