

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO.548 OF 2005

IN THE MATTER OF THE ESTATE OF KIRIGO w/o MUNGA

alias KIRIGO MUNGA – DECEASED

CHARLES MATHANGANI WAMAHIU

DAVID MUNGA WAMAHIU.....APPLICANTS

versus

**PETER WACHIRA WAMAHIU.....
RESPONDENTS**

R U L I N G

A grant of Letters of Administration Intestate in respect of the Estate of Kirigo w/o Munga alias Kirigo Munga – deceased was given to **Peter Wachira Wamahi** on 14th March 2006. By the summons dated 18th September 2006, Peter Wachira Wamahi, applied for the grant to be confirmed. On 23rd October, 2006 the grant was confirmed whereof the parcel of land known as **L.R. No. Aguthi/Muruguru/397** and the shares held in A/C No.00284124096 with Nyeri Farmers Sacco, were transmitted to Peter Wachira Wamahi. When **Charles Mathangani Wamahi** and **David Munga Wamahi**, hereinafter referred to as the **Applicants** learnt of what had happened, they took out the summons dated 22nd February 2007, in which they applied for the confirmed grant to be revoked. The summons is supported by the affidavit of Charles Mathangani Wamahi. Peter Wachira Wamahi hereinafter referred to as the '**Respondent**' opposed the summons by filing a replying affidavit he swore on 6th May 2007, and a further affidavit sworn on 15th July, 2011. When the summons came up for hearing interpartes on 13th April, 2011, learned counsels appearing in the cause recorded a Consent Order in which the parties agreed to have the summons determined by affidavit evidence and by written submissions.

I have considered the material placed before this court plus the written submissions. The Applicants alleged that the Respondent obtained the grant fraudulently by concealment from the Court of something material to the case. It is argued that the Respondent represented himself as the only grandson of the deceased yet he knew the applicants were the other surviving grandsons. The Applicants proposed for the deceased's Estate to be shared equally between the trio. The Applicants admit that the estate has already been fully administered in that the estate assets have already been transmitted to the Respondent.

The Respondent on the other hand, denied concealing anything material from the Court. The Respondent avers that the Applicants were the deceased's step grandsons hence they had no right to claim from the deceased's estate. He further averred that the deceased had actually bequeath her estate to him during her lifetime in appreciation of the care he offered his grandmother. What is clear in my mind is that both the Respondent and the Applicants are step-grandsons of the deceased. When it comes to sharing the deceased's estate, the trio should be treated equally. The Respondent has however, put forward a very strong case which is to the effect that the deceased bequeath *intervivos* to him. That assertion has not been challenged by the Applicants. That contention is supported by the affidavit of Gachucha Njama and Moses sworn on 15th July 2011. In the circumstances, the Respondent was under no obligation to inform the Applicants nor any of his siblings in the succession proceedings. In the end, I see no merit in the summons for revocation of grant dated 22nd February, 2007. The same is ordered dismissed. Since the cause involves members of the same family, I direct that each party meets 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. Kindinda for the Applicant and Mr. Wachira for the Respondent.