



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**SUCCESSION CAUSE NO.314 OF 2008**  
**IN THE MATTER OF THE ESTATE OF THE**  
**LATE PRISCILLA WANGUI KARUGU – DECEASED**

**JACKIN WACHIRA KARUGU.....PETITIONER/RESPONDENT**

**versus**

**JOHN MURIUKI WAHOME.....1<sup>ST</sup> APPLICANT**

**GABRIEL GICHOHI KARUGU.....2<sup>ND</sup> APPLICANT**

**R U L I N G**

The subject matter of this ruling is the Summons for Revocation/Annulment of Grant dated 23<sup>rd</sup> June 2011, taken out by **John Muriuki Wahome** and **Gabriel Gichohi Karugu**, hereinafter referred to as the Applicants. The duo swore a joint affidavit to support the summons. **Jackin Wachira Kurugu**, hereinafter referred to as the Respondent, filed a replying affidavit to resist the summons. Learned Counsels appearing in the cause recorded a Consent Order to have the dispute resolved by affidavit evidence and by written submissions.

I have considered the grounds set out on the face of the summons plus the facts deponed in the affidavits filed for and against the summons. I have further considered the written submissions filed by both sides. The applicants have put forward two main grounds to support their summons: First, that the Respondent has failed to diligently administer the estate. Secondly, that the grant has become useless and in-operative. It is the submission of the Applicants that the Respondent was not diligent to administer the estate in that he has transferred the assets of the estate to himself and to other persons not named in the certificate of the confirmed grant. It is further alleged that the Respondent is not entitled to share the deceased's estate because he had been given a bigger portion of the land due from their deceased's father's estate vide **Nyeri High Court Succession Cause No.49 of 1984**. In response to those allegations, the Respondent stated that he was entitled to inherit the deceased's estate and that is why the Applicants endorsed in the consent forms their approval. He averred that the Applicants wanted to defeat the grant issued on 5<sup>th</sup> February, 2010 by filing a fresh Succession when they knew this Petition was pending. The Respondent further pointed out that there was no evidence he did not diligently administer the deceased's estate. He argued that the Applicants had failed to give him prior due notice of his failings as an administrator before coming to Court under **Section 76(d)** of the **Law of Succession Act**. The Respondent has urged this Court to find that the summons has been overtaken by events due to the Applicant's delay in bringing the summons in time. The facts leading to the filing of this summons appear to be undisputed. To start with, there is no dispute that the Applicants and the Respondent are brothers. They are sons of the late Priscilla Wangui Karugu, deceased. The deceased was the registered proprietor of the

parcel of land known as **L.R. No. Thegenge/Karia/1648**.

The certificate of confirmation of grant dated 5<sup>th</sup> February, 2010 shows that the land which measures about 0.364 Ha or thereabouts would be shared in equal measure between the following:

(i) *Jackin Wachira Karugu.*

(ii) *Gabriel Gichuhi Karugu.*

(iii) *John Muriuki Wahome.*

(iv) *Francis Wanjohi Karugu.*

(v) *Daniel Mugi Karugu.*

The record shows that the grant was confirmed on 5<sup>th</sup> May 2010, the Applicants plus Francis Wanjohi Karugu had failed to execute all the necessary documents to give effect to the confirmed grant. This turn of events prompted the Respondent to seek the assistance of this Court to permit its Deputy Registrar to step in and sign the relevant documents in place of the Applicants vide the Summons General dated 4<sup>th</sup> May, 2010. There is no evidence as what happened to the aforesaid summons. It would appear the same is still pending. In Prayer 2, the Respondent applied to Court to issue an order dispensing with the production of Identity Cards, Personal Identification Number and Photographs of the beneficiaries during the sub-division of **L.R. No. Thegenge/Karia/1648**. According to the affidavit of Daniel Mugi Karugu, the Respondent had applied for the Land Control Board consent to have the aforesaid parcel of land sub-divided into five sub-divisions namely:

***L.R. No. Thegenge/Karia/3397.***

***L.R. No. Thegenge/Karia/3398.***

***L.R. No. Thegenge/Karia/3399.***

***L.R. No. Thegenge/Karia/3340.***

***L.R. No. Thegenge/Karia/3341.***

Upon sub-division, **L.R. No. Thegenge/Karia/3398** was transmitted to Daniel Mugi Karugu who in turn sold and transferred it to Peter Muriithi Wachira and Margaret Wangari Muriithi. The Respondent has stated that he sold his portion i.e. **L.R. No. Thegenge/Karia/3397** to Peter Muriithi Wachira. It is alleged that the Applicants are yet to cause their parcels to be transmitted to them despite having been informed. Attached to the joint affidavit of the Applicants are copies of the certificates of search showing that **L.R. No. Thegenge/Karia/3398** was transferred and registered in the joint names of Peter Muriithi Wachira and Margaret Wangari Muriithi while **L.R. No. Thegenge/Karia/3397** was transferred and registered in the name of Peter Muriithi Wachira. The remaining parcels i.e. **L.R. Nos. Thegenge/Karia/3399, 3340 and 3341** are registered in the name of Jackin Wachira Karugu awaiting collection. It would appear from the record that the parcel of land in dispute was a sub-division transmitted to the deceased from the Estate of Karugu Waruta, deceased vide ***Nyeri High Court Succession Cause No.49 of 1984***. The late Karugu Waruta was the registered proprietor of the parcel of land known as **L.R. Thegenge/Karia/630**. When he passed away, the aforesaid parcel of land was shared in the following manner:

***Jackin Wachira Karugu - 1.5 acres.***

***Priscilla Wangari Karugu - 0.9 acres.***

- Gabriel Gichohi** - 1.1 acres.
- John Muriuki** - 1.1 acres.
- Francis Wanjohi** - 1.1 acres.
- Daniel Muji** - 1.1 acres.

When Priscilla Wangui Karugu passed away, the Applicants alleged that the Respondent was not entitled to inherit anything from her estate because he had received a bigger portion of land from the estate of the late Karugu Waruta. I have critically analysed the evidence and some issues appear not to have answered by the Respondent despite having been provoked to do so. The Applicants have alleged that the executed forms consenting the Respondent to take up the letters of administration bearing in mind that he had no interest in the estate of the deceased. It is further stated by the Applicants that the Respondent informed them that the forms they had signed were misplaced hence should be treated as lost and that is why they were prompted to file a fresh Petition for a Grant of Letters of Administration i.e. **Nyeri High Court Succession Cause No.1031 of 2009**. It is when they presented the grant to the Lands Office that the Applicants learnt that the Respondent had already distributed the estate. The question: is whether the Respondent diligently administered the estate? The truth of the matter is that the Applicants gave the Respondent consent to apply for the grant. The applicants did not give their consent to the mode of distribution. The Applicants embarked on another course by filing a fresh Petition. They admit that the Respondent did not give his approval because there was evidence of the existence of this Petition. In my assessment of the affidavit evidence, it is clear in my mind that the Applicants have not been candid in this saga. It would appear they wanted to steal a match by filing a fresh Succession Cause behind the back of the Respondent. The record shows that the beneficiaries were all present in Court when the Summons for Confirmation of Grant was heard before the Honourable Mr. Justice Makhandia on 5<sup>th</sup> February, 2010. One wonders why the Applicants obtain a fresh grant on 2<sup>nd</sup> June 2010, vide **Nyeri High Court Succession Cause No.1031 of 2009** yet they knew the grant had been confirmed vide this Cause on 5<sup>th</sup> February, 2010 in their presence.

In the end, I find no merit in the Summons for Revocation/Annulment of Grant. I am also convinced that the Respondent has been diligent in the manner he administered the estate. Even if I was to give the applicants the order, they are seeking, I doubt whether the orders will be useful to them in view of the fact that part of the estate has already been transmitted to the beneficiaries and subsequently transferred to third parties whose rights are protected under **Section 93** of the **Law of Succession Act**. A fair order in the circumstances is to dismiss the summons which I hereby order. Since the dispute involves siblings, I direct that each one of them meets his costs.

**Dated and delivered this 27<sup>th</sup> day of April 2012.**

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**J. K. SERGON**

**JUDGE**

Miss Amboko holding brief Kariuki for the Applicant. No appearance for Theuri Mwangi for the Respondents.