



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**CIVIL SUIT 386 OF 2004**

**BETTY MAITHA DUNCAN.....PETITIONER**

**VERSUS**

**GILBERT MURIUKI CHABARI.....OBJECTOR**

**AND**

**HUMPHREY MUGAMBI MUGA.....PURCHASER**

**RULING**

The application under consideration has been brought by the objector GILBERT MURIUKI CHABARI. It is the one dated 23<sup>rd</sup> May 2006. It has been brought under Section 76 of Law of Succession Act and Rule 44(1) of P & A Rules.

It seeks to have the confirmed grant revoked or annulled for reasons:-

- 1. The proceedings to obtain the grant were defective in substance.**
- 2. The grant was obtained fraudulently by the making of a false statement and by concealment from the court of something material to the cause.**
- 3. That the person to whom the grant was made was distributed the estate to persons who are not entitled to the estate of the deceased and has disinherited the objector.**

There is a supporting affidavit sworn by the objector. The gist of the affidavit is that the grant was obtained fraudulently, secretly and by concealment of material facts. That the applicant being eldest son of the deceased and his other brothers were not informed; that not all the assets of the deceased were included in the petition and that those included were wrongly described. The objector avers that the petitioner is sister who is married in Gucha District and who was not entitled to apply for the grant.

The application is opposed Mr. Gituma for petitioner filed an affidavit which answers to this application, sworn by the petitioner. Mr. Gituma did not come for the hearing of the application.

The gist of the petitioners affidavit is none of the children of deceased are disinherited. That all assets of deceased except 1869 were included in the petition. That the rest are not in the deceased names.

Mr. Ondieki for objector urged the court to allow the application on the grounds set out in the supporting affidavit which he also repeated in his submissions. I have set out those grounds hereinabove.

The objector's evidence as contained in his supporting affidavit to this application has been controverted in part in petitioner's affidavit. The petitioner has challenged some of the averments in it. Considering both petitioner's and objector's affidavits I find there is a genuine case that some assets of the deceased were not included. We have a green card of at least two of the parcels No. 1859 and No. 1860. There is no evidence of fraudulent concealment. It could have been a genuine mistake.

Having considered this application I will grant it in the following terms.

- 1. The confirmed grant issued by this court on 27<sup>th</sup> July 2003 be and is hereby revoked.**
- 2. Each party to bear their own costs of the application.**

Dated, signed and delivered this day of 31<sup>st</sup> July 2012.

**J. LESIIT**

**JUDGE**