

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

Succession Cause 574 of 2007

IN THE MATTER OF THE ESTATE OF MWANGI NJOGU – DECEASED

A N D

**ELIUD MURIITHI MWANGI.....
PETITIONER**

-versus-

SERAH NJERI MWANGI.....OBJECTO

R U L I N G

The subject matter of this ruling is the Summons for Revocation or Annulment of Grant dated 4th October 2007 in which Serah Njeri Mwangi, the Applicant herein prays for the following orders:

- “1. The grant was obtained fraudulently by the making of a false statement and/or concealment of otherwise material and relevant facts to the case.***
- 2. The estate herein comprising of 1 land parcel number KIINE/SAGANA/284 do revert to the name of the deceased.***
- 3. The costs be to the applicant.”***

The Applicant swore an affidavit in support of the summons. Eliud Muriithi Mwangi, the Respondent herein, filed a Replying Affidavit he swore to oppose the application.

When the summons came up for interpartes hearing this court directed the dispute to be determined 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 taken into account the rival written submissions. The Applicant has argued that the estate comprises of five households each with an average of four children save for the fifth house with one child. The Applicant represents the fifth house. She pointed out that most of the beneficiaries were left out from the distribution of the estate hence the Respondent committed acts of fraud and is guilty concealment of material facts justifying the revocation of the grant. The Applicant further accused the Respondent of failing to disclose to court that the deceased had substantially distributed his estate *intervivos*. It is said the Respondent even failed to disclose that he had received 5 acres as a gift *intervivos* from the deceased. There is also a submission that the petition was heard and determined by a court which had no pecuniary jurisdiction, the estate valued at approximately Ksh.800,000/=. The Respondent avers in his Replying Affidavit that the Applicant was fully made aware of the existence of these proceedings and that she even actively participated in signing the necessary forms consenting the Respondent to apply for Letters of Administration.

A critical examination of the material placed before this court will show that the deceased’s estate was distributed to only eight (8) members of the family yet the estate comprises of about 22 family members. It is obvious that some family members may have been excluded from sharing the estate. Those members were not disclosed to the court. The Respondent has not controverted the allegation that the deceased was married to five wives. The Respondent has only disclosed two wives. In my view, I think

this is a serious mistake which will lead to the revocation of the grant. The Applicant has also alleged that the Respondent has failed to disclose the gift of 5 acres he received from the deceased *intervivos*. This allegation has not been refuted. I find the Respondent guilty of material non-disclosure. In the petition, the value of the estate is put at Ksh.800,000/=. The Respondent filed the petition in the subordinate court. With respect, I agree with the Applicant's submission that the Subordinate Court lacked the pecuniary jurisdiction to hear and determine the petition under **Section 48(1)** of the **Law of Succession Act**.

In the end, I find the Summons for Revocation and Annulment of Grant dated 4th October 2007 to be well founded. The aforesaid Summons is allowed as prayed save that each party shall meet his or her own costs.

Dated and delivered this 17th day of August 2012.

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J. K. SERGON

JUDGE