

REPUBLIC OF KENYA

High Court at Nyeri

Succession Cause 125 of 2010

LUCY NYAWIRA CHEGE.....APPLICANT

-versus-

JOHNSON CHEGE MACHARIA.....RESPONDENT

R U L I N G

A Grant of Letters of Administration Intestate in respect of the estate of Chege Macharia, deceased was issued to Johnson Chege Macharia on 14th July 2010 and confirmed on 20th May 2011. Lucy Nyawira Chege, hereinafter referred to as the Applicant, took out the Summons for Revocation of Grant dated 23rd May 2011 in which she sought for the aforesaid grant to be revoked. She filed two affidavits she swore in support of the summons. Johnson Chege Macharia, the Respondent herein filed a Replying Affidavit he swore to opposed the summons.

The main ground raised and argued by the Applicant is that the Respondent had failed to disclose to court that the Applicant had already filed and served him with an Affidavit of Protest when he appeared for the hearing of the Summons for Confirmation of Grant. It is alleged that the file copy of the Affidavit of Protest could have been plucked off before the file was placed before the judge hearing the Summons for Confirmation of Grant. The Respondent on his part averred that he nor his advocate had been served with the Affidavit of Protest by the time the Summons for Confirmation came up for interpartes hearing. The Respondent admits that he is now aware that an affidavit of Protest had been filed before the grant was confirmed. The Applicant's complaint to this court appears to be genuine. It is apparent from the annexures attached to the affidavit of Lucy Nyawira Chege, that an Affidavit of Protest was filed. There is a copy plus the official receipt for court fees paid. The affidavit was filed on 1st March 2011. I am convinced the order confirming the grant was issued in error hence the order should be set aside which I hereby order. Consequently, the application for confirmation of grant is restored. Parties to set down the Summons for Confirmation of Grant together with the Protest for hearing after directions have been taken. Costs of the Summons for Revocation of Grant to abide the outcome of the summons for Confirmation of Grant.

Dated and delivered this 17th day of August,2012.

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J. K. SERGON
JUDGE